

Social Security (International Agreements) Act 1999

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This compilation is in 2 volumes

Volume 1: sections 1–25

Schedules 2‑15

**Volume 2:** **Schedules 16‑32**

**Endnotes**

Each volume has its own contents

**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 28 May 2021 (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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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AGREEMENT

BETWEEN

AUSTRALIA

AND

THE REPUBLIC OF CROATIA

ON SOCIAL SECURITY

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

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

Resolved to cooperate in the field of social security;

Have agreed as follows:

PART I—GENERAL PROVISIONs

ARTICLE 1

**Definitions**

1. In this Agreement the terms below have the following meanings:

(a) **"Croatia"** means the Republic of Croatia;

(b) **"benefit"** means, in relation to a Party, any of the benefits, pensions or allowances listed in paragraph 1 of Article 2, and includes any amount, increase or supplement that is payable in addition to that benefit, pension or allowance to a person who is qualified for that amount, increase or supplement under the legislation of that Party, but for Australia does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;

(c) **"Competent Authority"** means,

in relation to Australia:

the Secretary of the Department responsible for the application of the legislation in subparagraph 1(a)(i) of Article 2 of this Agreement except in relation to the application of Part III of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner, and

in relation to Croatia:

the Ministry of Labour and Social Welfare;

(d) **"Competent Institution"** means,

in relation to Australia:

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

in relation to Croatia:

theCroatian 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.

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.

2. For the purpose of this Article, where a person has a period as an Australian resident and a period of insurance in Croatia, any period of overlap shall be taken into account once only by Australia as a period as an Australian resident.

3. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:

(a) for the purpose of an Australian benefit claimed by a person residing outside Australia, the minimum period required shall be 12 months, of which at least six months must be continuous; and

(b) for the purpose of an Australian benefit claimed by an Australian resident, no minimum period shall be required.

ARTICLE 14

**Calculation of Australian Benefits**

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

2. The provisions in paragraph 1 shall continue to apply for 26 weeks where a person comes temporarily to Australia.

3. Subject to the provisions of paragraph 4 and 5, where an Australian benefit is granted by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:

(a) deducting the amount of the Croatian benefit which that person is entitled to receive from the maximum rate of Australian benefit;

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

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

4. The provisions in paragraph 3 shall continue to apply for 26 weeks where a person temporarily leaves Australia.

5. Where a member of a couple is, or both that person and his or her partner are entitled to a Croatian benefit or benefits, each of them shall be deemed, for the purpose of paragraph 3 and for the legislation of Australia, to be in receipt of half of either the amount of that benefit or the total of both those benefits as the case may be.

PART V

**PROVISIONS RELATING TO CROATIAN BENEFITS**

ARTICLE 15

**Totalisation for Croatian Benefits**

1. If a person does not fulfil the requirements for pension solely on the basis of completed periods of insurance, the entitlement to a benefit shall be established on the basis of totalising the periods of insurance and Australian working life residence provided these periods do not overlap.

2. If a person qualifies for a benefit under Croatian legislation without the need for totalisation of the periods completed in the territories of both Parties, the Croatian Competent Institution shall grant the benefit according to its own legislation.

3. If the period of insurance amounts to less than 12 months no benefit shall be granted. This does not apply if there is entitlement to a benefit only on the basis of that lesser period of insurance.

4. Notwithstanding the provision of paragraph 4 of Article 2, where based on the provisions of paragraph 1 of this Article a person does not satisfy conditions for the benefit, the competent institution of Croatia shall take into account periods of insurance or periods of residence completed by Croatian nationals in a third State to which Croatia is bound by an agreement on social security which provides for the totalisation of periods of insurance or residence, respectively.

ARTICLE 16

**Calculation of Croatian Benefits**

1. If a person qualifies for a benefit under Croatian legislation only by the application of the totalisation provisions contained in paragraph 1 of Article 15, the Croatian Competent Institution shall calculate the amount of the benefit according to the Croatian legislation.

2. If the amount of the benefit under Croatian legislation cannot be calculated according to paragraph 1 of this Article, the Croatian Competent Institution shall calculate it in the following way:

(a) it shall first calculate a theoretical amount of a benefit which would be payable if all totalised periods (being periods of insurance and periods of Australian working life residence) were completed under Croatian legislation;

(b) on the basis of this theoretical amount, it shall then calculate the actual amount of the benefit which is payable according to the ratio of the period of insurance and the totalised periods.

3. Paragraph 1 of this Article shall not apply if the amount of Croatian pension calculated under that paragraph is less than the amount determined in accordance with paragraph 2 of this Article.

PART VI

**MISCELLANEOUS PROVISIONS**

ARTICLE 17

**Lodgement of Documents**

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of the other Party in accordance with the Administrative Arrangement made pursuant to Article 20 at any time after the Agreement has come into force.

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

3. The reference in this Article to an appeal is an appeal that may be made to an administrative body or a corresponding body of either Party that has been established by, or for the purposes of, the legislation of each Party.

4. Any exemption granted in the territory of one of the Parties from payment of taxes or fees in respect of certificates and documents required to be submitted to the Competent Authorities and Competent Institutions in the same territory shall also apply to the certificates and documents which, for the purpose of this Agreement, have to be submitted to the Competent Authorities or Competent Institutions of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

ARTICLE 18

**Recovery of Overpayments**

1. Where:

(a) an amount of arrears of benefit is paid or payable to a person by the Competent Institution of one Party whether by virtue of this Agreement or under the legislation of that Party; and

(b) for all or part of the relevant period, the other Party has paid to that person a benefit under its legislation; and

(c) the amount of the benefit paid by that other Party would have been reduced had the benefit paid or payable by the Competent Institution of the first Party been paid during that period;

then

(d) the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period, shall be a debt due by that person to the other Party and may be recovered by that Party.

2. Australia may recover all or part of that debt referred to in paragraph 1 under the provisions of the Acts forming the social security laws of Australia.

3. Where the Competent Institution of one Party has not yet paid the benefit described in subparagraph 1(a) to that person:

(a) that Competent Institution shall, at the request of the Competent Institution of the other Party, pay the amount of the benefit necessary to meet the debt described in paragraph 1 to the Competent Institution of that Party and shall pay any excess to that person; and

(b) any shortfall may be recovered by the Competent Institution of the other Party.

4. A reference in paragraph 1 to a benefit means, for Australia, a pension, benefit or allowance payable under the social security laws of Australia and, for Croatia, a pension, benefit or allowance payable under the Pension Insurance legislation.

ARTICLE 19

**Exchange of Information and Mutual Assistance**

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement shall to the extent permitted by the legislation they administer:

(a) subject to paragraphs 3 and 4, communicate to each other any information necessary for the application of this Agreement;

(b) lend their good offices and furnish assistance to one another (including the communication to each other of any necessary information) with regard to the determination or payment of any benefit under this Agreement or under the social security laws of either Party as if the matter involved the application of their own legislation;

(c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of the Agreement;

(d) at the request of one to another, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 20; and

(e) advise each other of any laws which amend, supplement, supersede or replace their respective legislations and which are relevant to the operation of this Agreement promptly after those laws are made.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangement made in accordance with Article 20.

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 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 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 | FOR THE REPUBLIC OF CROATIA |
| Neil Francis  Australian Ambassador to 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:  
theInstitute 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.

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: | FOR THE GOVERNMENT OF THE REPUBLIC OF SLOVENIA: |
| AMBASSADOR MAX HUGHES | 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.

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.

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 toNorway:

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;

(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:

Aage pension; and

Bdisability 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 benefitswhich arise whether directly under Australian legislation or by virtue of this Agreement.

**ARTICLE 5**

**Payment of Benefits Abroad**

1.Unless otherwise decided in this Agreement, the provisions of the legislation of a Party making the payment of cash benefits conditional upon residence or stay in the territory of that Party, shall not apply to persons who stay or reside in the territory of the other Party.

2.In respect of Australian legislation, rent assistance, pharmaceutical allowance and any other additional amount, increase or supplement payable with a benefit under this Agreement, shall, subject to the provisions of Article 2 paragraph 2, only be payable outside Australia to the extent provided in Australian legislation.

3.The provisions of this Article do not apply to Australian Disability Support Pensions paid to non‑severely disabled persons.

4.In respect of Norwegian legislation, the provisions of this Article shall apply only to disability and old age pensions as designated in Article 2 paragraph 1 subparagraph (b)(i) A and B. However this Article shall not apply to such pensions, or parts of pensions, calculated under the provisions relating to a guaranteed minimum supplementary pension for persons who are born disabled or who become disabled at an early age or under the special provisions governing the calculation of pensions to refugees and stateless persons.

5.In respect of Norwegian legislation, the provisions of this Article shall be applicable only if the person concerned has completed at least

(a)one year of occupational activity in Norway, or

(b)three years of residence in Norway

prior to the contingency and within the age limits which apply for pension earning in Norway.

**PART II**

**COVERAGE PROVISIONS**

**SECTION A**

**PROVISIONS RELATING TO THE SUPERANNUATION GUARANTEE LEGISLATION OF AUSTRALIA EXCLUSIVELY AND TO NORWEGIAN LEGISLATION**

**ARTICLE 6**

**Purpose of the Section**

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

**ARTICLE 7**

**Application of the Section**

This Section shall only apply if an employee and/or the employer of the employee would, apart from this Section, be subject to the legislation of both Parties in respect of work of the employee or remuneration paid for the work.

**ARTICLE 8**

**Diplomatic and Consular Relations**

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

**ARTICLE 9**

**Avoidance of Double Coverage**

1. Unless otherwise provided in paragraphs 2, 3 or 5, if an employee works in the territory of one Party, the employer of the employee and the employee shall in respect of the work and the remuneration paid for the work be subject only to the legislation of that Party. This shall apply even if the employer or employee is resident in the territory of the other Party.

2.If an employee:

(a)is covered by the legislation of one Party (‘the first Party’);

(b)was sent, whether before, on or after the entry into force of this Agreement, by the Government of the first Party to work in the territory of the other Party (‘the second Party’);

(c)is working in the territory of the second Party in the employment of the Government of the first Party; and

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

the employer of the employee and employee shall be subject only to the legislation of the first Party in respect of the work performed after entry into force of this Agreement and the remuneration paid for that work.

3. If an employee:

(a)is covered by the legislation of one Party (‘the first Party’) and in the case of Norway, is on a Norwegian payroll as determined by Norwegian legislation;

(b)was sent, whether before, on or after the entry into force of this Agreement, by an employer who is subject to the legislation of the first Party to work in the territory of the other Party (‘the second Party’);

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

(d)has not been in the territory of the second Party more than 3 years after being sent to work on that territory by the employer; and

(e)is not working permanently in the territory of the second Party;

the employer of the employee and employee shall be subject only to the legislation of the first Party in respect of the work performed after entry into force of this Agreement and the remuneration paid for that work.

4.For the purposes of subparagraph 9(3)(c), an entity is a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

5.Employees on board vessels flying the Norwegian flag shall be subject to Norwegian legislation, as applied. However, if the employee is an Australian resident working for an Australian resident employer, then Australian legislation shall also apply. Exceptions to avoid double coverage may be made under Article 11.

6.Employees working for a Norwegian airline company on board an aircraft in international traffic shall be subject to Norwegian legislation as applied. An employee who is employed by an Australian resident employer as a member of the crew of an aircraft in international traffic shall, in respect of that employment and the remuneration paid for that employment, be subject only to the legislation of Australia if the employee is an Australian resident.

**ARTICLE 10**

**Employees on the Continental Shelf**

1. Subject to paragraph 2, employees on installations for the exploration and the exploitation of natural submarine deposits on the Norwegian continental shelf, shall be subject to Norwegian legislation, as applied on the Norwegian continental shelf.

2.The provisions of Article 9(3) shall apply correspondingly to an employee who is seconded to installations as mentioned in paragraph 1 of this Article.

**ARTICLE 11**

**Exception agreements**

1.The competent authorities may for the purposes of this Part by agreement in writing:

(a)extend the period of three years referred to in Article 9(3)(d) for any employee; or

(b)provide that an employee is taken to work in the territory of a particular Party or to work on a ship or aircraft in international traffic under the legislation of a particular Party and is covered only by the legislation of that Party.

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

(a)a class of employees; and/or

(b)particular work or particular type of work (including work that has not occurred at the time the agreement is made).

**ARTICLE 12**

**Voluntary Insurance**

This Agreement shall not preclude the opportunity for a person to be voluntarily insured under the Norwegian National Insurance Scheme.

**SECTION B**

**PROVISIONS RELATING TO AUSTRALIAN LEGISLATION, THE SUPERANNUATION GUARANTEE LEGISLATION OF AUSTRALIA EXCLUDED, AND TO NORWEGIAN LEGISLATION**

**ARTICLE 13**

**Temporary Absence from Australia**

An Australian resident shall not cease to be regarded as an Australian resident because he or she is staying temporarily in Norway for any reason.

**ARTICLE 14**

**Spouse or Partner and Dependants of Employees**

1. The spouse or partner and dependants who accompany a person mentioned in Article 9 paragraph 2 and Article 9 paragraph 3 to Australia shall be subject to Norwegian legislation for any period in which they are not occupationally active in the territory of Australia.

2. The spouse or partner and children who accompany a person mentioned in Article 9 paragraph 2 and Article 9 paragraph 3 to Norway shall not be subject to Norwegian legislation for any period in which they are not occupationally active in the territory of Norway.

**PART III**

**PROVISIONS RELATING TO AUSTRALIAN BENEFITS**

**ARTICLE 15**

**Residence or Presence in Norway**

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

(a)is an Australian resident or residing in the territory of Norway; and

(b)is in Australia, or the territory of Norway,

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

2.Australian legislation which provides for, applies to or affects disability support pension for a person who is not severely disabled shall not be affected by paragraph 1.

**ARTICLE 16**

**Totalisation for Australia**

1.Where a person to whom this Agreement applies has accumulated:

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

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

(c)a period of insurance in Norway

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

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

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

(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 Norway

prior to the contingency and within the age limits which apply for pension earning under Norwegian legislation.

2.To become entitled to a supplementary pension under Norwegian legislation, pension points for at least one year must have been credited. In respect of such pensions, periods of Australian working life residence to be taken into account under the provisions of paragraph 1, shall be periods in which the person concerned was gainfully occupied in Australia.

3.In respect of entitlement to a pension as a surviving spouse or child, the periods to be totalised under paragraphs 1 and 2 shall be the deceased person’s periods as mentioned.

**ARTICLE 19**

**Calculation of Norwegian Benefits**

1.If entitlement to a benefit exists under Norwegian legislation without recourse to the provisions of this Agreement, the benefit shall be calculated in accordance with the provisions of Norwegian legislation.

2.If entitlement to a benefit exists only according to the provisions of this Agreement, the benefit shall be calculated by:

(a)determining the benefit which would have been payable if the person’s periods of Australian working life residence had been insurance periods in Norway, and

(b)multiplying the benefit arrived at under subparagraph (a) by the person’s actual insurance periods in Norway and dividing the product by the sum of the person’s insurance period in Norway and periods of Australian working life residence.

3.If the person’s total insurance period in Norway, or the sum of such periods and periods of Australian working life residence, exceeds 40 years, the actual period, or sum of periods, shall be replaced by the figure “40” for the purposes of paragraph 2.

4.For the purposes of paragraphs 2 and 3, the provisions of Article 18 paragraphs 2 and 3 shall apply correspondingly. A supplementary pension under paragraph 2 shall be calculated on the basis of the average annual pension point figure for the years during which the person concerned has been credited with pension points under Norwegian legislation. If the person has been credited with pension points for more than 20 years, the basis shall be the average figure for the 20 best years.

5.In respect of pensioners who are resident in Australia, Australian income tested benefits shall not be taken into account for the purpose of the income testing of supplements under Norwegian legislation for supported spouse and/or children

**ARTICLE 20**

**Transitional Provisions**

In respect of entitlement to a supplementary pension under Norwegian legislation calculated under the rules of a reduced pension earning requirement for persons born before 1937, only periods of residence in Norway before 1967 may be taken into account.

**ARTICLE 21**

**Totalisation concerning Voluntary Membership**

In order to meet the requirement of previous insurance periods for obtaining voluntary membership of the Norwegian social security scheme, periods of Australian working life residence shall be totalised with insurance periods under Norwegian legislation. The requirements for totalisation according to Article 18 paragraph 1 shall apply.

**PART V**

**MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

**ARTICLE 22**

**Implementation of the Secondment Provisions**

A Party shall provide according to rules to be agreed in the Administrative Arrangement, pursuant to Article 29 of the Agreement, a document showing that a person is covered under Article 9.

**ARTICLE 23**

**Lodgement of Documents**

1.A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of the other Party in accordance with the Administrative Arrangement made pursuant to Article 29 at any time after the Agreement enters into force.

2.For the purposes of assessing entitlement to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of the other Party shall be treated as the date of lodgement of that document with the Competent Institution of the first Party.

3.In relation to Australia, the reference in this Article to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by the social security laws of Australia.

**ARTICLE 24**

**Presentation of Claims**

A claim for a benefit presented under the legislation of one Party will be considered as a claim for a similar benefit under the legislation of the other Party provided that the other Party receives this request within 6 months. This is not applicable if the applicant states or if it is otherwise evident that the claim shall only apply to a benefit under the legislation of the former Party.

**ARTICLE 25**

**Determination of Claims**

1.In determining the eligibility or entitlementof 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 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.

AG**REEMENT BETWEEN AUSTRALIA AND THE SWISS CONFEDERATION ON SOCIAL SECURITY**

The Government of Australia and the Swiss Federal Council, guided by the wish to regulate relations between their two countries in the field of social protection, have agreed to conclude the following Agreement:

**PART I**

**GENERAL PROVISIONS**

**Article 1**

**Definitions**

1. In this Agreement the following definitions shall apply:

(a) **“Contracting States”** means the Swiss Confederation and the Government of Australia;

(b) **“territory”** means,

(i) in relation to Switzerland, the territory of Switzerland;

(ii) in relation to Australia, Australia as defined in the legislation of Australia;

(c) **“national”** means,

(i) in relation to Switzerland, a Swiss national;

(ii) in relation to Australia, an Australian citizen;

(d) **“legislation”** means,

(i) in relation to Switzerland, the laws specified in subparagraph 1(a) of Article 2; and

(ii) in relation to Australia, the law specified in subparagraph 1(b)(i) of Article 2 except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the laws specified in subparagraph 1(b)(ii) of Article 2;

(e) **“Competent Authority”** means,

(i) in relation to Switzerland, the Federal Social Insurance Office; and

(ii) in relation to Australia, the Secretary of the Department responsible for the application of the legislation in subparagraph 1(b)(i) of Article 2 except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner;

(f) “**Competent Institution”** means,

(i) in relation to Switzerland, the institution which has the task of implementing the Swiss legislation; and

(ii) in relation to Australia, the institution or agency which has the task of implementing the applicable Australian legislation;

(g) **“period of Australian working life residence”** means, in relation to a person, the period defined as such under the legislation of Australia but does not include any period deemed pursuant to Article 18 to be a period in which that person was an Australian resident;

(h) **“insurance periods”** means, in relation to Switzerland, the contribution periods as well as equivalent periods which are determined or recognised as insurance periods under the Swiss legislation;

(i) **“benefit”** means, in relation to a Contracting State, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable in addition to that benefit, pension or allowance, but for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;

(j) **“reside”** means, in relation to Switzerland, stay ordinarily;

(k) **“domicile”** means, in relation to Switzerland and within the meaning of the Swiss Civil Code, the place in which a person is staying with the intention of living there permanently;

(l) **“refugee”** means a refugee as defined by the Convention on the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967 to that Convention;

(m) **“stateless person”** means a stateless person as defined by the Convention on the Status of Stateless Persons of 28 September 1954;

(n) **“family members and survivors”** means, in relation to Switzerland, family members and survivors, whose rights are derived from a national of a Contracting State, from a refugee or from a stateless person;

(o) **“widowed person”** means, in relation to Australia, a person who stops being a member of a couple because of the death of the person’s legal husband or wife, but does not include a person who has a partner.

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

**Article 2**

**Legislative Scope**

1. Subject to paragraph 2, this Agreement shall apply to the following laws and regulations as amended at the date of signature of this Agreement, and to any laws and regulations that subsequently amend, supplement, supersede or replace them:

(a) in relation to Switzerland:

(i) the Federal Act on old‑age and survivors’ insurance;

(ii) the Federal Act on disability insurance;

(b) in relation to Australia:

(i) the Acts referred to as “the social security law” in the *Social Security Act 1991*, and any regulations made under any such Act insofar as those Acts or regulations provide for, apply to or affect the following benefits:

A. age pension;

B. disability support pension for the severely disabled;

C. pensions payable to widowed persons;

D. double orphan pension; and

E. carer payment;

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

2. Notwithstanding the provisions of subparagraph 1(b), this Agreement shall apply to women who are receiving wife pension at the date this Agreement comes into force and who are the wives of:

(a) persons receiving age pension; or

(b) persons receiving disability support pension for the severely disabled.

3. This Agreement shall apply to laws or regulations which extend the existing legislation to other categories of beneficiaries or which involve 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 1*a* of the Federal Law on old‑age and survivors’ insurance.

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

**Article 5**

**Export of Benefits**

1. Unless provided otherwise in this Agreement,

(a) benefits payable under the Swiss legislation shall also be paid to nationals of Australia or other persons to the extent that they derive rights from a national of Australia, while the beneficiary is in the territory of Australia;

(b) Australian benefits which are payable by virtue of this Agreement shall be payable in the territory of Switzerland.

2.

(a) Benefits payable under the legislation of Switzerland shall be paid to a national of Australia residing in a third State as well as to their family members and survivors with respect to rights they derive from that national, under the same conditions and to the same extent as they would be paid to a Swiss national or to their family members and survivors in respect to rights they derive from a national.

(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. Theprovisions of this Article shall not apply to carer payment.

7. In relation to Australia, any additional amount, increase or supplement that is payable in addition to a benefit under this Agreement shall be payable outside the territory of Australia only if it would be so payable if that benefit was payable independently of this Agreement.

**PART II**

**PROVISIONS ON COVERAGE**

**PROVISIONS RELATING TO THE SUPERANNUATION GUARANTEE LEGISLATION OF AUSTRALIA AND TO SWISS LEGISLATION**

**Article 6**

**Application of the Part**

This part applies where:

(a) without the application of this Part an employee and/or the employer of the employee would otherwise be covered by the legislation of both Contracting States;

(b) without the application of Article 8 letter B and Article 9 paragraph 1(b) and paragraph 2(b) an employee from Switzerland and/or the employer of the employee would otherwise come to be covered by the legislation of Australia and not remain covered by the legislation of Switzerland; or

(c) without the application of any other provision of this Part an employee would not be covered by the legislation of either Contracting State.

**Article 7**

**General Provision**

Subject to the other provisions of this Part, if an employee works in the territory of one Contracting State, the employer of the employee and the employee shall in respect of the work and the remuneration paid for the work be subject only to the legislation of that Contracting State.

**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 thatwork.

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 thatwork.

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 theirsurvivor 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 theirsurvivor, 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 theirsurvivor 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 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;

(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 CompetentInstitution 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 ContractingState.

**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 | FOR THE SWISS FEDERAL COUNCIL |
| Mal Brough | Pascal Couchepin |
| Minister for Families, Community Services and Indigenous Affairs | Head of the Federal Department of Home Affairs |

Schedule 21 — Republic of Korea

Note:   See Section 5.

AG**REEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF KOREA**

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

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

Have agreed as follows: ‘

**PART I   
General Provisions**

**Article 1   
Definitions**

1. For the purposes of this Agreement:

(a) **“national”** means, as regards the Republic of Korea (hereinafter referred to as “Korea”), a national of Korea as defined in the Nationality Law, as amended, and as regards Australia, a citizen of Australia;

(b) **“legislation”** means, in relation to Korea, the laws and regulations specified in paragraph 1(a) of Article 2, and in relation to Australia, the laws specified in paragraph 1 (b)(i) of Article 2 except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the laws specified in paragraph 1 (b)(ii) of Article 2;

(c) **“Competent Authority”** means, as regards Korea, the Minister of Health and Welfare, and as regards Australia, the Secretary to the Commonwealth Department responsible for the legislation specified in paragraph 1(b)(i) of Article 2, except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner;

(d) **“agency”** means, as regards Korea, the National Pension Service, and, as regards Australia, the institution or agency which has the task of implementing the Australian legislation;

(e) **“period of coverage”** in relation to Korea means a period of contributions under the legislation of Korea and any other period taken into account under that legislation for establishing an entitlement to benefits or for calculating the amount of benefits;

(f) “**period of Australian working life residence**” means, unless otherwise provided in this Agreement, a period defined as such in the legislation of Australia but does not include any period deemed pursuant to Article 16 to be a period in which that person was an Australian resident;

(g) “**benefit**” means, in relation to Korea, any benefit provided for in the legislation specified in paragraph 1(a) of Article 2 and in relation to Australia, a benefit, pension or allowance for which provision is made in the Australian legislation as specified in paragraph 1 (b)(i) of Article 2, and includes any additional amount, increase or supplement that is payable in addition to that benefit, pension or allowance to or in respect of a person who qualifies for that additional amount, increase or supplement under the Australian legislation as specified in paragraph 1 (b)(i) of Article 2 but, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee as specified in paragraph 1 (b)(ii) of Article 2.

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

**Article 2   
Legislative Scope**

1. This Agreement shall apply to the following legislation:

(a) Asregards Korea,

(i) the National Pension Act and enforcement rules and regulations thereof; and

(ii) with regard to benefits under the Agreement, the provisions of the legislation under the preceding sub‑paragraph (a)(i) concerning old age pension and lump‑sum refund;

(b) As regards Australia,

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

(ii) the law concerning the superannuation guarantee: the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992* and the Superannuation Guarantee (Administration) Regulations.

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

3. This Agreement shall also apply to future legislation which amends, supplements, consolidates or supersedes the legislation specified in paragraph 1 of this Article. However, this Agreement shall not apply to the future legislation which extends the existing legislation of one Contracting Party to new categories of beneficiaries unless the Competent Authorities of the Contracting Parties agree otherwise.

**Article 3   
Personal Scope**

This Agreement shall apply to any person who:

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

(b) is or has been subject to the legislation of Korea;

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

**Article 4  
Equality of Treatment**

Unless otherwise provided in this Agreement, all persons to whom this Agreement applies in accordance with Article 3 shall be treated equally by a Contracting Party in the application of its legislation regarding eligibility for and payment of benefits which arise whether directly under the legislation of that Contracting Party or by virtue of this Agreement.

**Article 5  
Export of Benefits**

1. Unless otherwise provided in this Agreement, any provision of the legislation of one Contracting Party which restricts entitlement to or payment of cash benefits solely because the person resides outside or is absent from the territory of that Contracting Party shall not be applicable to the persons who reside in the territory of the other Contracting Party.

2. Where the legislation of a Contracting Party provides that a benefit is payable outside the territory of that Contracting Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Contracting Parties.

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

**PART II  
Provisions on Coverage**

**Article 6  
Purpose of this Part**

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

**Article 7  
Application of this Part**

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

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

**Article 8  
General Provisions**

1. Except as otherwise provided in this Part, a person employed within the territory of one Contracting Party and the person’s employer shall, with respect to that employment, be subject only to the legislation of that Contracting Party.

2. A person, who is a resident of Korea and is engaged in self‑employment in the territory of either Contracting Party in respect of that self‑employment, shall be subject only to the legislation of Korea.

3. This Agreement shall not preclude the possibility for a person to be voluntarily insured under the Korean legislation.

**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:

‑ 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.TheCompetent 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.

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 allowancefor 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.

**Article 9**

**Diplomatic and Consular Relations**

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

**PART III**

**PROVISIONS RELATING TO AUSTRALIAN BENEFITS**

**Article 10**

**Residence or Presence in Hellas**

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

(a) is an Australian resident or a resident of Hellas; and

(b) is in Australia, or in the territory of Hellas;

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

**Article 11**

**Totalisation for Australia**

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

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

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

(c) a period of insurance under the legislation of Hellas;

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

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

(a) has been an Australian resident for a continuous period which 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:

 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 ΗΕLLΕNIC LEGISLATION**

**Article 13**

**Totalisation of insurance periods, residence and calculation of benefits**

1. If a person is entitled to an Hellenic benefit without recourse to the provisions of paragraph 2 and 3 of this Article the amount of the benefit is determined according to the Hellenic legislation on the basis of insurance periods completed under this legislation.

2. Where no entitlement to Hellenic benefit exists on the basis of Hellenic insurance periods, the periods of residence completed under Australian legislation shall be totalized for the acquisition of the rights to old age pension under the Hellenic legislation, provided that these periods do not overlap.

3. Where periods of residence completed under Australian legislation are taken into account for the acquisition of the right according to the previous paragraph the benefit payable under the Hellenic legislation is determined as follows:

a. The competent Institution first calculates the amount of the benefit which would have been awarded to the person concerned if the periods completed under Australian legislation and totalized according to the previous paragraph had been completed under its own legislation for the acquisition of the right to old age pension.

b. The competent Institution in determining the amount of the benefit takes into consideration the salary (earnings), income or contributions which have been paid during the period completed under the Hellenic legislation.

c. where the amount determined as above is less than the minimum benefit provided by the Hellenic legislation then the minimum amount shall substitute the amount determined as above.

4. On the basis of the amount calculated according to the previous paragraph the competent institution determines the amount of the partial benefit payable by it, according to ratio between the length of the periods of insurance completed under its own legislation and the total duration of the periods of insurance and residence which have been taken into account.

5. If the total length of the periods of insurance which shall be taken into account in accordance with Hellenic legislation for the calculation of the benefit does not attain 300 days (12 months) and provided that no entitlement to a benefit according to the Hellenic legislation exists without applying the previous paragraphs no benefit shall be paid out according to this legislation.

6. Only Hellenic insurance periods are taken into account when establishing the kind of benefit and the competent institution.

7. For the purposes of this Article

(a) one (1) month of residence in Australia is equivalent to 25 days of insurance in Hellas and

(b) one (1) year of residence in Australia is equivalent to 300 days of insurance in Hellas.

8. For the purpose of this Article, a period of residence in Australia shall be deemed as a period of insurance in Hellas only if that period of residence under the legislation of Australia is certified by the Competent Institution of Australia.

**PART V**

**MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

**Article 14**

**Lodgement of Documents**

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Party in accordance with the Administrative Arrangement made pursuant to Article 18 at any time after the Agreement enters into force.

2. For the purposes of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of one Party shall be considered as the date of lodgement of that document with the Competent Institution of the other Party. The Competent Institution with which a claim, notice or appeal is lodged shall refer it without delay and, in any case, within 12 months to the Competent Institution of the other Party.

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

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

**Article 15**

**Payment of Benefits**

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

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

3. While the measures in paragraph 2 are being implemented, the Party not imposing the restrictions set out in paragraph 2 may impose restrictions on the payment of its benefits paid under the Agreement in the territory of the other Party, until the other Party has lifted all such restrictions. On the lifting of the restrictions by the other Party and the payment of arrears by that other Party then the first Party shall also pay arrears of its benefits in relation to the entire time during which the first Party’s restrictions were imposed.

4. Where a Party has imposed legal or administrative restrictions on the transfer of its currency outside of its territory as mentioned in paragraph 2, it shall inform the other Party of those restrictions within one calendar month of their imposition and shall implement the measures described in that paragraph within 3 months of the imposition of the restrictions. A failure to comply with either requirement may be treated by the other Party as a material breach of the Agreement for the purposes of Article 60 of the Vienna Convention on the Law of Treaties of 23 May 1969.

5. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party, whether the beneficiary is in the territory of that Party or the other Party, without deduction for government administrative fees and charges for processing and paying that benefit.

6. Any exemption granted in the territory of one of the Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to the Competent Authorities and Competent Institutions in the same territory, shall also apply to certificates and documents which, for the purposes of this Agreement, have to be submitted to the Competent Authorities and Competent Institutions in the territory of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

**Article 16**

**Recovery of overpayments**

1. Where:

(a) an amount of arrears of benefit is paid or payable by a Party; and

(b) for all or part of that period, the other Party has paid to that person a benefit under its legislation; and

(c) the amount of the benefit paid by the other party would have been reduced had the benefit paid or payable by the first Party been paid during that period;

(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.

|  |  |
| --- | --- |
| 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;

(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.

|  |  |
| --- | --- |
| 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 | Jolanta Fedak |
| Minister for Foreign Affairs | 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:

(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:

(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);

(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.

**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 Gödöllőon this 7th day of June two thousand and eleven in the English and Hungarian languages, each text being equally authoritative.

Kevin Rudd Dr János Martonyi

|  |  |
| --- | --- |
| FOR AUSTRALIA | 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 insuranceperiod 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 insuranceperiod 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 exits 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 insuranceperiods 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;

(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.

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 Ilona Jursevska

Special Envoy to Eastern Europe 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:

(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 FOR THE REPUBLIC OF INDIA**

**(Kevin Andrews, Minister for (Biren Nanda, High Commissioner)**

**Social Services)**

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**

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 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 | FOR THE REPUBLIC OF ESTONIA |
| Gerald Thomson  Australian Ambassador to Sweden | Margus Tsahkna  Minister for Social Protection |

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

**Abbreviation key—Endnote 2**

The abbreviation key sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

**Editorial changes**

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

**Misdescribed amendments**

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | o = order(s) |
| am = amended | Ord = Ordinance |
| amdt = amendment | orig = original |
| c = clause(s) | par = paragraph(s)/subparagraph(s) |
| C[x] = Compilation No. x | /sub‑subparagraph(s) |
| Ch = Chapter(s) | pres = present |
| def = definition(s) | prev = previous |
| Dict = Dictionary | (prev…) = previously |
| disallowed = disallowed by Parliament | Pt = Part(s) |
| Div = Division(s) | r = regulation(s)/rule(s) |
| ed = editorial change | reloc = relocated |
| exp = expires/expired or ceases/ceased to have | renum = renumbered |
| effect | rep = repealed |
| F = Federal Register of Legislation | rs = repealed and substituted |
| gaz = gazette | s = section(s)/subsection(s) |
| LA = *Legislation Act 2003* | Sch = Schedule(s) |
| LIA = *Legislative Instruments Act 2003* | Sdiv = Subdivision(s) |
| (md) = misdescribed amendment can be given | SLI = Select Legislative Instrument |
| effect | SR = Statutory Rules |
| (md not incorp) = misdescribed amendment | Sub‑Ch = Sub‑Chapter(s) |
| cannot be given effect | SubPt = Subpart(s) |
| mod = modified/modification | underlining = whole or part not |
| No. = Number(s) | commenced or to be commenced |

Endnote 3—Legislation history

| Act | Number and year | Assent | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- | --- |
| Social Security (International Agreements) Act 1999 | 173, 1999 | 20 Dec 1999 | 20 Mar 2000 |  |
| A New Tax System (Family Assistance and Related Measures) Act 2000 | 45, 2000 | 3 May 2000 | Sch 3 (items 56, 57), Sch 5 and 6: 1 July 2000 (s 2(4)) | Sch 5 and 6 |
| Social Security and Veterans’ Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000 | 94, 2000 | 30 June 2000 | Sch 9: 1 Aug 2000 (s 2(9)) | — |
| Family and Community Services (2000 Budget and Related Measures) Act 2000 | 138, 2000 | 24 Nov 2000 | Schedule 1 (items 1–19, 22), Schedules 2, 3 and Schedule 4 (item 1): 1 Jan 2001 Schedule 4 (item 2): 1 Mar 2001 Remainder: Royal Assent | — |
| Family and Community Services Legislation Amendment Act 2003 | 30, 2003 | 15 Apr 2003 | Schedule 1 (item 124) 1 July 2000 | — |
| Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) (Consequential Amendments) Act 2006 | 64, 2006 | 22 June 2006 | Schedule 14 (item 13): 1 July 2006 | — |
| Social Security and Family Assistance Legislation Amendment (Miscellaneous Measures) Act 2006 | 108, 2006 | 27 Sept 2006 | Schedule 5 and Schedule 8 (items 225, 226): Royal Assent | — |
| Employment and Workplace Relations Amendment Act 2009 | 37, 2009 | 3 June 2009 | Schedule 2 (items 36–41): 4 June 2009 | — |
| Social Services and Other Legislation Amendment Act 2014 | 14, 2014 | 31 Mar 2014 | Sch 4 (items 7–14): 1 July 2014 (s 2(1) item 3B) | Sch 4 (item 14) |
| Norfolk Island Legislation Amendment Act 2015 | 59, 2015 | 26 May 2015 | Sch 2 (item 335): 1 July 2016 (s 2(1) (item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) (item 6) | Sch 2 (items 356–396) |
| as amended by |  |  |  |  |
| Territories Legislation Amendment Act 2016 | 33, 2016 | 23 Mar 2016 | Sch 2: 24 Mar 2016 (s 2(1) item 2) | — |
| Statute Law Revision Act (No. 1) 2016 | 4, 2016 | 11 Feb 2016 | Sch 6 (items 4, 5): 10 Mar 2016 (s 2(1) item 6) | — |
| Social Services Legislation Amendment (Welfare Reform) Act 2018 | 26, 2018 | 11 Apr 2018 | Sch 2 (items 76, 77, 82–93) and Sch 4 (items 101–103, 105–110): 20 Mar 2020 (s 2(1) items 4, 6) | Sch 2 (items 82–93) and Sch 4 (item 105–110) |
| Social Services and Other Legislation Amendment (Student Assistance and Other Measures) Act 2021 | 42, 2021 | 27 May 2021 | Sch 3 (items 6, 7): 28 May 2021 (s 2(1) item 1) | — |

| Number and year | FRLI registration or gazettal | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| 2000 No. 104 | 15 June 2000 | 1 Oct 2000 | — |
| 2000 No. 105 | 15 June 2000 | 1 Jan 2001 | — |
| 2000 No. 165 | 22 June 2000 | 1 Oct 2000 | — |
| 2001 No. 215 | 17 Aug 2001 | 1 Jan 2002 | — |
| as repealed by |  |  |  |
| 2002 No. 34 | 7 Mar 2002 | 7 Mar 2002 | — |
| 2001 No. 245 | 14 Sep 2001 | 1 Jan 2002 | — |
| as repealed by |  |  |  |
| 2002 No. 34 | 7 Mar 2002 | 7 Mar 2002 | — |
| 2002 No. 31 | 7 Mar 2002 | 1 July 2002 | — |
| 2002 No. 32 | 7 Mar 2002 | Schedules 1: 1 Jan 2003 Schedule 3: 1 Apr 2003 Remainder: 1 Oct 2002 | r. 2 (am. by 2002 No. 164, Sch. 1 [item 1]; 2002 No. 225, Sch. 1 [item 1]) |
| as amended by |  |  |  |
| 2002 No. 164 | 27 Jun 2002 | 27 Jun 2002 | — |
| 2002 No. 225 | 26 Sept 2002 | 26 Sept 2002 | — |
| 2002 No. 33 | 7 Mar 2002 | Schedule 2: 1 Jan 2003 Remainder: 1 Oct 2002 | r. 2 (am. by No. 2002, 210, Sch. 1 [item 1]) |
| as amended by |  |  |  |
| 2002 No. 210 | 12 Sep 2002 | 12 Sep 2002 | — |
| 2002 No. 165 | 3 Jul 2002 | 1 Jan 2003 | — |
| 2003 No. 207 | 15 Aug 2003 | 1 Jan 2004 | — |
| as amended by |  |  |  |
| 2003 No. 374 | 23 Dec 2003 | r. 3: 23 Dec 2003 | — |
| 2003 No. 374 | 23 Dec 2003 | rr. 1–3: 23 Dec 2003 Remainder: 1 July 2004 | — |
| 2004 No. 19 | 26 Feb 2004 | 1 July 2004 | — |
| 2004 No. 109 | 3 June 2004 | 1 July 2005 | — |
| 2005 No. 21 | 25 Feb 2005 | 1 July 2005 | — |
| 2005 No. 191 | 22 Aug 2005 | 1 Jan 2006 | — |
| 2006 No. 149 | 26 June 2006 | 1 Jan 2007 | — |
| 2007 No. 144 | 18 June 2007 | 1 Jan 2008 | — |
| 2007 No. 352 | 22 Oct 2007 | rr. 1–3: 23 Oct 2007 Remainder: 1 Oct 2008 | — |
| 2008 No. 107 | 20 June 2008 | rr. 1–3: 21 June 2008 Remainder: 1 Jan 2009 (*see* F2008L04699) | — |
| 2008 No. 265 | 19 Dec 2008 | rr. 1–3: 20 Dec 2008 Remainder: 1 July 2009 (*see* F2009L02118) | — |
| 2009 No. 58 | 14 Apr 2009 | rr. 1–3: 15 Apr 2009 Remainder: 1 Oct 2009 (*see* F2009L03482) | — |
| 21, 2010 | 2 Mar 2010 (F2010L00552) | r 1–3: 3 Mar 2010 (r 2(1)(a)) Remainder: 1 Oct 2010 (s 2(1)(b)) | — |
| 247, 2010 | 18 Oct 2010 (F2010L2645) | r 1–3: 19 Oct 2010 (r 2(1)(a)) Sch 1: 1 Apr 2011 (r 2(1)(b)) Remainder: 1 July 2011 (r 2(1)(c)) | — |
| 137, 2011 | 4 Aug 2011 (F2011L01597) | r 1–3: 5 Aug 2011 (s 2(1)(a)) Remainder: 1 Jan 2012 (s 2(1)(b)) | — |
| 154, 2011 | 17 Aug 2011 (F2011L01671) | r 1–3: 18 Aug 2011 (s 2(1)(a)) Remainder: 1 Jan 2012 (s 2(1)(b)) | — |
| 258, 2011 | 12 Dec 2011 (F2011L02639) | r 1–3: 13 Dec 2011(s 2(1)(a)) Remainder: 1 Oct 2012 (s 2(1)(b)) | — |
| 54, 2012 | 23 Apr 2012 (F2012L00910) | s 1–3: 24 Apr 2012 (s 2(1)(a)) Remainder: 1 Jan 2013 (s 2(1)(b)) | — |
| 89, 2015 | 22 June 2015 (F2015L00856) | s 1–5: 23 June 2015 (s 2(1) item 1) Remainder: 1 Jan 2016 (s 2(1) item 2) | — |

| Name | Registration | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| Social Security (International Agreements) Amendment (Republic of Austria) Regulation 2016 | 9 May 2016 (F2016L00720) | Sch 1: 1 Mar 2017 (s 2(1) item 2) | — |
| Social Security (International Agreements) Amendment (Republic of Estonia) Regulation 2016 | 29 Nov 2016 (F2016L01827) | Sch 1: 1 Jan 2018 (s 2(1) item 2) | — |
| Social Security (International Agreements) Amendment (New Zealand) Regulations 2017 | 16 Feb 2017 (F2017L00124) | Sch 1: 1 July 2017 (s 2(1) item 2) | — |
| Social Security (International Agreements) Amendment (Amendment of New Zealand Agreement) Regulations 2017 | 19 June 2017 (F2017L00694) | Sch 1: 1 July 2017 (s 2(1) item 2) | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| **Part 1** |  |
| s 3 | am No 42, 2021 |
| s 4A | ad No 59, 2015 |
| **Part 2** |  |
| s. 10 | am. No. 64, 2006; No. 37, 2009 |
| s. 12A | ad. No. 138, 2000 |
|  | rep No 4, 2016 |
| **Part 3** |  |
| **Division 1** |  |
| s. 13 | am. Nos. 45 and 94, 2000 |
| s. 14A | ad. No. 45, 2000 |
|  | am. No. 30, 2003; No. 108, 2006 |
| **Division 2** |  |
| s 16 | am No 14, 2014 |
| s 18 | rep No 14, 2014 |
| s 19 | rep No 14, 2014 |
| s 20 | rep No 14, 2014 |
| s 21 | am No 26, 2018 |
| s 22 | rep No 14, 2014 |
| **Division 3** |  |
| s 23 | am No 14, 2014 |
| s 24 | am No 14, 2014 |
| **Schedules** |  |
| Schedule 1 | rep No 4, 2016 |
| Schedule 2 | rs. Statutory Rules 2000 No. 104 |
|  | am. Statutory Rules 2000 No. 165 |
| Schedule 3 | rs Statutory Rules 2002 No. 31; F2017L00124 |
|  | am F2017L00694 |
| Schedule 4 | rs. Statutory Rules 2001 No. 215 (as rep. by Statutory Rules 2002 No. 34); Statutory Rules 2002 No. 32 |
| Schedule 5 | rs. Statutory Rules 2002 No. 165 |
| Schedule 6 | rs. SLI 2005 No. 21 |
| Schedule 7 | rs. Statutory Rules 2001 No. 215 (as rep. by Statutory Rules 2002 No. 34); Statutory Rules 2002 No. 32 (as rs. by Statutory Rules 2002 No. 225) |
| Schedule 8 | rs. SLI 2005 No. 191 |
| Schedule 9 | rs. Statutory Rules 2001 No. 245 (as rep. by Statutory Rules 2002 No. 34); Statutory Rules 2002 No. 32 |
| Schedule 10 | am. Statutory Rules 2001 No. 215 (as rep. by Statutory Rules 2002 No. 34); Statutory Rules 2002 No. 32; SLI 2011 No. 137 |
|  | rs F2016L00720 |
| Schedule 12 | ad. Statutory Rules 2000 No. 105 |
| Schedule 13 | ad. Statutory Rules 2002 No. 33 |
| Schedule 14 | ad. Statutory Rules 2002 No. 33 |
|  | rs. SLI 2007 No. 352 |
| Schedule 15 | ad. Statutory Rules 2003 No. 374 |
|  | rs. SLI 2009 No. 58 |
| Schedule 16 | ad. Statutory Rules 2004 No. 19 |
| Schedule 17 | ad. Statutory Rules 2003 No. 207 |
| Schedule 18 | ad. Statutory Rules 2004 No. 109 |
| Schedule 19 | ad. SLI 2006 No. 149 |
| Schedule 20 | ad. SLI 2007 No. 144 |
| Schedule 21 | ad. SLI 2007 No. 352 |
| Schedule 22 | ad. SLI 2007 No. 352 |
| Schedule 23 | ad. SLI 2008 No. 107 |
| Schedule 24 | ad. SLI 2008 No. 265 |
| Schedule 25 | ad. SLI 2010 No. 21 |
| Schedule 26 | ad. SLI 2010 No. 247 |
| Schedule 27 | ad. SLI 2010 No. 247 |
| Schedule 28 | ad. SLI 2011 No. 154 |
| Schedule 29 | ad. SLI 2011 No. 258 |
| Schedule 30 | ad. SLI 2012 No. 54 |
| Schedule 31 | ad SLI No 89, 2015 |
| Schedule 32 | ad F2016L01827 |