Social Security (International Agreements) Act 1999

Act No. 173 of 1999 as amended

VOLUME 2 includes: Table of Acts
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Endnotes

This compilation was prepared on 1 July 2002
incorporating amendments up to Act No. 138 of 2000 and Statutory Rules 2002 No. 33

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

Prepared by the Office of Legislative Drafting,
Attorney-General’s Department, Canberra
Notes to the Social Security (International Agreements) Act 1999

Note 1

The Social Security (International Agreements) Act 1999 as shown in this compilation comprises Act No. 173, 1999 amended as indicated in the Tables below.


The Social Security (International Agreements) Act 1999 was amended by Schedule 2 of the Social Security (International Agreements) Act 1999 Amendment Regulations 2002 (No. 2) (2002 No. 32). [see Note 2]

The Social Security (International Agreements) Act 1999 was amended by the Social Security (International Agreements) Act 1999 Amendment Regulations 2002 (No. 3) (2002 No. 33). [see Note 3]

For application, saving or transitional provisions made by the A New Tax System (Family Assistance and Related Measures) Act 2000, see Act No. 45, 2000.
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**Act Notes**

(a) The *Social Security (International Agreements) Act 1999* was amended by Schedule 3 (items 56 and 57) only of the *A New Tax System (Family Assistance and Related Measures) Act 2000*, subsection 2(4) of which provides as follows:

(4) Schedule 2, items 3 to 5 and 15 to 57 of Schedule 3 and Schedules 5 and 6 commence immediately after the commencement of the provisions referred to in subsection 2(2) of the *A New Tax System (Family Assistance) (Administration) Act 1999*.

The provisions commenced on 1 July 2000.

(b) The *Social Security (International Agreements) Act 1999* was amended by Schedule 9 only of the *Social Security and Veterans’ Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*, subsection 2(9) of which provides as follows:

(9) Item 123 of Schedule 1, and Schedule 9, commence, or are taken to have commenced, on 1 August 2000.
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Social Security (International Agreements) Act 1999 Amendment Regulations 2002 (No. 2) (SR 2002 No. 32)

The following amendments commence on 1 October 2002:

Schedule 2

[1] Schedule 7

substitute

Schedule 7—Netherlands

Note See section 5.

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

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

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

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

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

Have agreed as follows:

PART I GENERAL PROVISIONS

ARTICLE 1 Definitions

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

“benefit” means in relation to a Party, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes
any additional amount, increase or supplement for which a beneficiary is qualified under the legislation of that Party but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee and, for the Netherlands, does not include any benefit, payment or entitlement under the Social Security Supplementary Benefits Act (TW);

“Competent Authority” means, in relation to Australia: the Secretary to the Commonwealth Department responsible for the legislation specified in subparagraph 1(a)(i) of Article 2 except in relation to the application of Part II, Section A of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner, and, in relation to the Netherlands: the Minister for Social Affairs and Employment;

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

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

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

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

“territory”, means, in relation to Australia, the Commonwealth of Australia, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island, and, in relation to the Kingdom of the Netherlands, the territory of the Kingdom in Europe; and
Note 2

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

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

ARTICLE 2
Legislative Scope

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

a) in relation to Australia:
   i) the Acts forming the social security law, in so far as the law provides for, applies to or affects the following benefits:
      A) age pensions;
      B) disability support pension for a person who is severely disabled; and
   ii) the law concerning the superannuation guarantee (which at the time of signature of this Agreement is contained in the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Regulations);

b) in relation to the Netherlands, its legislation on:
   i) general old age insurance;
   ii) invalidity insurance for employees and the self-employed;
   iii) general survivors’ insurance;
   iv) children’s allowances;
   v) sickness insurance (including employers’ liability for payment during sickness);
and for the application of Part II of the Agreement also its legislation on:

vi) unemployment insurance;

2. Notwithstanding the provisions of subparagraph 1(a), this Agreement shall continue to apply to women who are receiving Australian wife pension and are the wives of persons receiving Australian age pension and it shall also apply to women who are receiving Australian wife pension and are the wives of persons receiving Australian disability support pension for the severely disabled.

3. Notwithstanding the provisions of subparagraph 1(a), the term “benefit” shall include Australian pensions payable to widowed persons and Australian double orphans pensions for the purposes of Article 5.

4. Notwithstanding the provisions of subparagraph 1(a) of this Article, the term “benefit” shall, when the reference is to an Australian benefit, include pensions payable to widowed persons for the purposes of paragraphs 1 and 2 of Article 15.

5. Notwithstanding the provisions of subparagraph 1(a) the legislation of Australia shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security entered into by Australia with other States.

6. This Agreement shall apply to laws that extend the legislation of either Party to new categories of beneficiaries or to new branches or systems of social security only if the two Parties so agree in a Protocol to this Agreement.

7. Except as otherwise provided in this Agreement, this Agreement shall not apply to social and medical assistance schemes, to special schemes for civil servants or persons treated as such, or to benefit schemes for victims of war or its consequences.

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

ARTICLE 3

Personal Scope

Subject to other Articles of this Agreement, it shall apply to any person who:
Note 2

a) is or has been an Australian resident, or
b) is or has been subject to the legislation of the Netherlands, and, where applicable, to other persons in regard to the rights they derive from a person described above.

ARTICLE 4
Equality of Treatment

1. The citizens of each of the Parties shall be treated equally in the application of the legislation of Australia and of the Netherlands relating to benefits.

2. Subject to this Agreement and unless otherwise provided, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations relating to benefits which arise by virtue of this Agreement.

ARTICLE 5
Payment of benefits abroad

1. Benefits payable whether under this Agreement or otherwise shall not be reduced, modified, suspended or withdrawn on account of the recipient, or members of his or her family, residing in the territory of the other Party.

2. Where continuing qualification or payability of a benefit is subject to limitations as to time, then reference to the territory of a Party in those limitations shall be read also as reference to the territory of the other Party.

3. Where continuing qualification or payability of a benefit is subject to a requirement to be, for an Australian benefit, an Australian resident or, for a Netherlands benefit, a resident of the Netherlands and/or also to be present in Australia or the Netherlands respectively, then in regard to those requirements, a reference to an Australian resident shall be read also as a reference to a resident of the Netherlands and vice versa and a reference to being present in Australia shall be read also as being present in the Netherlands and vice versa.

4. Where a double orphan pension would be payable to a person under the legislation of Australia in respect of a young person whose sole surviving parent died while that young person was an Australian resident, if that person and that young person were residents of
Note 2

Australia, that pension shall, subject to that legislation, be payable while that person and that young person are residents of the Netherlands.

PART II PROVISIONS ON COVERAGE

SECTION A

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

ARTICLE 6

Purpose of Section A

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

ARTICLE 7

Application of Section A

Section A only applies where:

a) without the application of Section A an employee and/or the employer of the employee would otherwise be covered by both the legislation of the Netherlands and Australia; or

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

ARTICLE 8

Provisions on coverage

1. Unless otherwise provided in paragraphs 2, 3 or 4, if an employee works in the territory of one Party, the employer of the employee and the employee shall in respect of the work and the remuneration paid for the work be subject only to the legislation of that Party.
Note 2

2. If an employee:
   a) is covered by the legislation of one Party (‘the first Party’); and
   b) was sent, whether before, on or after the commencement of this Part, by the Government of the first Party to work in the territory of the other Party (‘the second Party’); and
   c) is working in the territory of the second Party in the employment of the Government of the first Party; and
   d) is not working permanently in the territory of the second Party; the employer and employee shall be subject only to the legislation of the first Party in respect of the work and the remuneration paid for the work.

3. If an employee:
   a) is covered by the legislation of one Party (‘the first Party’); and
   b) was sent, whether before, on or after the commencement of this Part, by an employer who is subject to the legislation of the first Party to work in the territory of the other Party (‘the second Party’); and
   c) is working in the territory of the second Party in the employment of the employer or a related entity of that employer; and
   d) was sent to work in the territory of the second Party and a period of 5 years has not elapsed from that time; and
   e) is not working permanently in the territory of the second Party; the employer and employee shall be subject only to the legislation of the first Party in respect of the work and the remuneration paid for the work. An entity is a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

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

5. For the purposes of the Netherlands’ legislation, a person who is subject to the Netherlands’ legislation in accordance with the provisions of this
Article shall be considered to be resident in the territory of the Kingdom of the Netherlands.

6. According to the provisions of this Article the Netherlands’ legislation shall be applicable if the employer or employee has applied for a certificate of coverage from the Netherlands’ authority within three months after the first day of secondment under paragraphs 2 or 3 and this certificate has been issued to the person concerned.

ARTICLE 9
Exception agreements

1. The competent authority for Australia and the competent institution for the Netherlands may for the purposes of Section A by agreement in writing:
   a) extend the period of 5 years referred to in subparagraph 3(d) of Article 8 for any employee; or
   b) agree that an employee is taken to work in the territory of a particular Party or to work on a ship or aircraft in international traffic under the legislation of a particular Party and is subject only to the legislation of that Party.

2. Any agreement made under paragraph 1 may apply to:
   a) a class of employees; and/or
   b) particular work or particular type of work (including work that has not occurred at the time the agreement is made).

SECTION B
PROVISIONS RELATING TO AUSTRALIAN LEGISLATION (OTHER THAN THAT RELATING TO THE SUPERANNUATION GUARANTEE) AND TO NETHERLANDS’ LEGISLATION

ARTICLE 10
Partner or Children of Seconded Employees Temporary Absence from Australia

An Australian resident, who is the partner or child of, and who accompanies to the Netherlands, an employee to which Article 8 paragraph 2 or 3 applies, shall not cease to be regarded as an Australian resident because he or she is temporarily in the Netherlands during the whole or part of the time during which that paragraph applies to that employee.
ARTICLE 11
Application of Netherlands Legislation to the Partner or Children of Seconded Employees

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

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

PART III PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 12
Residence or Presence in the Netherlands or a Third State

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

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

b) is in Australia or the Netherlands or that third State,

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

ARTICLE 13
Partner related Australian benefits

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

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ARTICLE 14
Totalisation for Australia

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:
   a) a period as an Australian resident that is less than the period required to qualify him or her, on that ground, under the legislation of Australia for that Australian benefit; and
   b) a period of Australian working life residence equal to or greater than the period identified in paragraph 4 for that person; and
   c) has accumulated a period of insurance;

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

2. For the purpose of paragraph 1, where a person:
   a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit, and
   b) has accumulated a period of insurance in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a), the total of the periods of insurance shall be deemed to be one continuous period.

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

4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:
   a) for the purposes of an Australian benefit claimed by a person residing outside Australia, the minimum period required shall be...
Note 2

be one year, of which at least six months must be continuous, and

b) for the purposes of an Australian benefit claimed by an Australian resident there shall be no minimum period of Australian working life residence.

ARTICLE 15
Calculation of Australian Benefits

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

2. When assessing the income of a person who is outside Australia for the purposes of calculating the rate of a benefit whether payable by virtue of this Agreement or otherwise;

   a) any payment according to the Algemene Bijstandswet to that person under the legislation of the Netherlands shall be disregarded;

   b) any payment of AOW-toeslag shall be disregarded; and

   c) if a proportionalised rate of Australian benefit is payable under the legislation of Australia then only a proportion of any other Netherlands’ old age benefit which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of residence in Australia (not exceeding 300) by the amount of that Netherlands’ benefit and dividing that product by 300.

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

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

where:

\[
A = \text{rate of Australian benefit payable;}
\]

\[
Q = \text{number of months of the period of residence in Australia of the person or 300 whichever is the lower;}
\]
Note 2

R = maximum rate of Australian benefit;
NP = Netherlands’ benefit excluding AOW toeslag;
I = income within the meaning of Australian legislation excluding Netherlands’ benefit and any payments according to the Algemene Bijstandswet;
F = free area under the Australian income test;
T = the relevant taper under Australian legislation.

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

4. Subject to the provisions in paragraphs 5 and 6, where a person who is in Australia is qualified to receive an Australian benefit only by virtue of this Agreement, the rate of that benefit shall be determined by:
   a) calculating that person’s income according to the legislation of Australia but disregarding in that calculation the Netherlands’ benefit received by that person; and
   b) deducting the amount of the Netherlands’ benefit received by that person from the maximum rate of that Australian benefit; and
   c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the legislation of Australia, using as the person’s income the amount calculated under subparagraph (a).

5. The provisions in paragraph 4 shall continue to apply for 26 weeks where a person departs temporarily from Australia.

6. Where a person is, or his or her partner is, or both that person and his or her partner are, in receipt of a Netherlands’ benefit or benefits, each of them shall be deemed, for the purpose of paragraph 4 and for the Acts forming the social security law as amended from time to time, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

ARTICLE 16
Exclusion of specified Netherlands’ payments from the Australian income test

1. Where a person receives or is entitled to receive a benefit under the social security laws of Australia:
Note 2

a) reimbursement payments for extra medical, nursing and immediately related expenses of a victim of persecution; and

b) the special allowance covering the extra medical expenses a victim of persecution has, but which are beyond his or her capacity to meet, while maintaining a certain standard of living, made under the State Assistance Scheme of the 1940-1945 Victims of Persecution (WUV), shall not be included as income for the purpose of assessing the rate of that Australian benefit.

2. For the purposes of this Article only, the term benefit shall include all social security payments under the social security laws of Australia.

PART IV PROVISIONS RELATING TO THE NETHERLANDS BENEFITS

ARTICLE 17
Benefits under the General Old Age Pensions Act

1. The Netherlands’ Competent Institution shall determine the old age pension directly and exclusively on the basis of periods of insurance completed under the Netherlands’ General Old Age Pensions Act.

2. Subject to paragraph 3, periods before January 1, 1957 during which a national of one Party after reaching the age of fifteen, resided in the territory of the Kingdom of the Netherlands or during which, while residing in another country the person was gainfully employed in the Kingdom of the Netherlands, shall also be considered as periods of insurance if the person does not satisfy the condition of the Netherlands’ legislation permitting such periods to be treated for that person as periods of insurance.

3. The periods referred to in paragraph 2 shall be taken into consideration in the calculation of the old age pension only if the person concerned has been insured under the Netherlands’ General Old Age Pensions Act and has resided for at least six years in the territory of one or both Parties after reaching the age of fifty-nine and only while the person is residing in the territory of either Party. However, the periods before January 1, 1957 shall not be taken into consideration if they coincide with periods taken into consideration for the calculation of an old age pension under the legislation of a country other than the Kingdom of the Netherlands.
ARTICLE 18
Benefits under the invalidity insurance for employees and the self-employed

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

2. The benefit shall be determined:
   a) according to the Netherlands’ Disability Act (WAO) in any case where the person was employed, at the moment the incapacity for work followed by invalidity occurred; and
   b) according to the Netherlands’ self-employed persons Disability Benefits Act (WAZ) in any case where the person was, in the year prior to the occurrence of the incapacity for work followed by invalidity, lastly a self-employed person.

3. The benefit established according to this Article shall be multiplied by a factor, of which the numerator consists of the total period in months in which the person was employed and/or self-employed in the Netherlands and the denominator consists of the period in months between the age of 15 and the moment the incapacity for work followed by invalidity occurred.

ARTICLE 19
Refusal to pay, suspension, withdrawal

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

ARTICLE 20  Common Provisions for the Calculation of Benefits

1. Where a Party (the first Party) makes a payment under this Agreement or under its social security laws to a person who resides in the territory of the other Party, the first Party will disregard from the application of any income test it applies any income-tested payment made by the other Party under this Agreement or under the other Party’s social security laws to that person.

2. For the purposes of this Article, the Netherlands’ invalidity benefits under WAO and WAZ shall be deemed to be income-tested benefits and the Netherlands’ rent subsidy shall be deemed to be paid under the Netherlands’ social security laws.

3. The principles set out in paragraphs 1 and 2 will continue to apply when a beneficiary moves to reside in a third country as if the beneficiary had not moved to that third country, provided that the relevant benefit is payable in that third country.

4. Where a person residing in a third country lodges a valid claim for a benefit, the principles set out in paragraphs 1 and 2 will be applied as if that person was resident in the territory of the Party where he or she was last resident before moving to that third country provided that the relevant benefit is payable in that third country.

PART VI  MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 21  Lodgement of Documents

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Party which should for the purposes of that legislation, have been presented within a prescribed period to a Competent Authority, Competent Institution or Tribunal of that Party, but which is presented within the same period to a Competent Authority, Competent Institution or Tribunal of the other Party, shall be treated as if it had been presented to the Competent Authority, Competent Institution or Tribunal of the first Party. The date on which such a claim, notice or appeal was submitted to that
Note 2

Competent Authority, Competent Institution or Tribunal of the first Party shall be considered only for the purposes of assessing entitlement to benefit as the date of its submission to that Competent Authority, Competent Institution or Tribunal of the other Party.

2. A claim for a benefit under the legislation of one Party shall be deemed to be a claim for the corresponding benefit under the legislation of the other Party, provided that the applicant:
   a) requests that it be considered an application under the legislation of the other Party, or
   b) provides information at the time of application indicating that periods of residence or periods of insurance have been completed under the legislation of the other Party and the claim is received by the Competent Institution of the other Party within six months from the date of lodgement with the first Party.

3. In any case to which paragraph 1 or 2 applies, the Competent Authority, Competent Institution or Tribunal to which the claim, notice or appeal has been submitted shall transmit it without delay to the Competent Authority, Competent Institution or Tribunal of the other Party.

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

ARTICLE 22
Recovery of overpayments

1. Where
   a) a benefit under this Agreement is claimed from, or is being paid by, one of the Parties; and
   b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to a benefit from the other Party and that, if paid, would affect the amount of that first-mentioned benefit;
Note 2

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

2. Where:

a) a benefit under this Agreement or otherwise is claimed from one of the Parties and, as a result of that claim, a benefit is payable by a Party to a person in respect of a past period and that past period occurred after the entry into force of this Agreement;

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

c) the amount of the benefit paid by that other Party would have been reduced had the benefit referred to in subparagraph (a) been paid during that past period,

then the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid on a periodical basis throughout the past period shall, for the purposes of this Article, be referred to as an “overpayment”.

3. A Competent Institution which has made an overpayment of a benefit to a beneficiary may request the other Competent Institution which is required to pay a corresponding benefit to that beneficiary to deduct the amount of the overpayment from any arrears of that corresponding benefit which the latter Competent Institution pays to that beneficiary. The latter Competent Institution shall if so requested deduct the amount of the overpayment from those arrears and transfer it to the former Competent Institution. Where the whole or part of any overpayment cannot be deducted from any arrears the provisions of paragraph 4 shall apply.

4. Where a Competent Institution of a Party is unable to recover pursuant to paragraph 3 all the amount of an overpayment it has made, it may, within the conditions and limits laid down by the legislation which it applies, request the Competent Institution of the other Party to deduct the unrecovered amount of the overpayment from any pension, benefit or allowance which the latter Competent Institution pays to the beneficiary. The latter Competent Institution shall make the deductions under the conditions and within the limits set out in the legislation which it applies as if it had made the overpayment and shall transfer the amounts deducted to the former Competent Institution.
5. The amount of any overpayment shall be a debt due by the person who received it to the Party that paid it.

6. A Party may determine that the amount, or any part, of the debt owing to it under paragraph 4 may be deducted from future payments of any pension, benefit or allowance payable at any time by that Party to the person owing the debt.

7. The Competent Institution receiving a request under paragraph 3 shall take the action agreed upon between the liaison agencies to recoup the amount of the overpayment and to transfer it to the other Competent Institution.

ARTICLE 23
Payments of Benefits

1. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement or to payment of social security contributions. Those measures shall operate retrospectively to the time the restrictions were imposed.

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

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

4. Any exemption granted in the territory of one of the Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to authorities and institutions in the same territory, shall also apply to certificates and documents which, for the purposes of this Agreement, have to be submitted to authorities and institutions in the territory of the other Party. Documents and certificates required to be produced for the purpose of this Agreement
Note 2

shall be exempt from authentication by diplomatic or consular authorities.

5. Where a person is in receipt of a benefit or benefits under this Agreement and is in a third country, the Party paying that benefit or those benefits shall continue to pay that benefit or those benefits if that Party has implemented an agreement on social security with that third country which provides for the portability of that benefit or those benefits.

ARTICLE 24
Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement shall:

a) to the extent permitted by the legislation which they administer, communicate to each other any information necessary for the application of this Agreement;

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

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

d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 25;

e) jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the Competent

294 Social Security (International Agreements) Act 1999
Note 2

Authorities and Competent Institutions for the reimbursement of certain types of expenses.

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

4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the Competent Authority or Competent Institution of a Party the obligation:
   a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party, or
   b) to supply particulars which are not obtainable under the laws or, in the normal course of the administration of that or the other Party.

5. Notwithstanding any laws or administrative practices of a Party, no information concerning a person which is received by that Party from the other Party shall be transferred or disclosed to any other country or to any organisation within that other country without the prior written consent of that other Party.

6. In the application of this Agreement, the Competent Authority and the Competent Institutions of a Party may communicate with the other in the official language of that Party.

ARTICLE 25

Administrative Arrangement

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

2. Liaison agencies shall be designated to facilitate the implementation of this Agreement.
ARTICLE 26

Review of the Agreement

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

PART VII TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 27

Commencement of Benefits

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

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

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

3. Subject to Article 28 no provision of this Agreement shall confer any right to receive payment of a benefit for a period before the date of entry into force of this Agreement.

4. Subject to Article 28 and to paragraph 3, a person may be qualified to receive a benefit, other than a lump sum payment, under this Agreement in respect of events which happened before the date of entry into force of this Agreement.

ARTICLE 28

Transitional Provisions

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

3. Any rights in course of acquisition under the 1991 Agreement at the date of entry into force of this Agreement shall be settled in accordance with the Agreement in force at the date of entitlement.

4. Where, from the date of entry into force of this Agreement, any claim to benefit has not been determined and entitlement arises before that date, the claim shall be determined in accordance with the 1991 Agreement and shall be determined afresh in accordance with this Agreement from its date of entry into force if this is more favourable than the rate determined under the 1991 Agreement.

5. Benefits, other than lump sum payments, shall be payable in accordance with this Agreement in respect of events which happened before the date of its entry into force, except that an accident which occurred or a disease which developed before that date shall not, solely by virtue of this Agreement, be treated as an industrial accident or an industrial disease if it would not have been so treated under any legislation or Agreement having effect at the time of its occurrence or development. For the purpose of determining claims in accordance with this Agreement, account shall be taken, where appropriate, of insurance periods and periods of residence, employment or presence, completed before the date of its entry into force.

6. Paragraph 5 shall not confer any right to receive payment of benefit for any period before the date of entry into force of this Agreement.

7. For the purpose of applying the first sentence of paragraph 5:

   a) any right to benefit acquired by a national in accordance with the 1991 Agreement may, at the request of the national concerned, be determined afresh in accordance with this Agreement with effect from the date of entry into force of this Agreement provided that the request has been made within two years of the date it enters into force and, if applicable, benefit awarded at the higher rate from the latter date;

   b) where the request for the benefit to be determined afresh is made more than two years after the date of entry into force of this Agreement payment of benefit, and the payment of any
arrears, shall be made in accordance with the legislation concerned.

8. No provision of this Agreement shall diminish any rights or benefits which a person has properly acquired under the legislation of either Party before the date of entry into force of this Agreement.

ARTICLE 29

Entry Into Force and Termination

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

2. Until entry into force of this Agreement, the Kingdom of the Netherlands shall apply subparagraph 1(b) of Article 2 and Article 5 from the first day of the second month following signature and also, for the Kingdom of the Netherlands, subparagraph 1(b) of Article 2 and Article 5 shall have retrospective effect to 1 January 2000.

3. Subject to paragraph 4, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives a note from the other through the diplomatic channel giving notice of termination of this Agreement.

4. In the event that this Agreement is terminated in accordance with paragraph 3, this Agreement shall continue to have effect in relation to all persons who:

a) at the date of termination, are in receipt of benefits, or
b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits; by virtue of this Agreement; or
c) immediately before the date of termination are subject only to the legislation of one Party by virtue of paragraph 2 or 3 of Article 8 of Part II, Section A of the Agreement, provided the employee continues to satisfy the criteria of these paragraphs.
IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

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

FOR THE GOVERNMENT OF                      FOR THE GOVERNMENT OF THE
AUSTRALIA                                KINGDOM OF THE

Peter Hussin                       J F Hoogervorst
[Signatures omitted]

[2] Schedule 9

substitute

Schedule 9—Portugal

Note See section 5.

AGREEMENT BETWEEN AUSTRALIA AND THE REPUBLIC OF PORTUGAL ON SOCIAL SECURITY

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

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

Desiring to review the Agreement between Australia and the Republic of Portugal on Social Security signed on 30 April 1991, and

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

Have agreed as follows:
PART I - GENERAL PROVISIONS

ARTICLE 1
Definitions

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

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

(b) “carer payment” means a carer payment for a person in Portugal who is caring for a partner who is in receipt of an Australian age pension or disability support pension for the severely disabled and who is also in Portugal;

(c) “Competent Authority” means:

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

in relation to Portugal: the Minister or other corresponding authority responsible for the social security schemes in all or any part of the territory of Portugal;

(d) “Competent Institution” means:
in relation to Australia: the institution or agency responsible for the administration of the legislation; and,

in relation to Portugal:

(i) the institution with which the person concerned is insured at the time of the application for benefit; or
(ii) the institution from which the person concerned is entitled or would be entitled to benefits if he or she or a member or members of his or her family were resident in the territory of the Party in which the institution is situated; or
(iii) the institution designated by the Competent Authority of Portugal;

(e) “Government employment” in relation to Australia includes employment by a political subdivision or local authority of Australia’’;

(f) “legislation” means, in relation to Australia, the law specified in subparagraph 1(a)(i) of Article 2 except in relation to the application of Part III of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the law specified in subparagraph 1(a)(ii) of Article 2; and in relation to Portugal, any laws, regulations and other statutory instruments which are in force in the whole or any part of its territory and which relate to the social security schemes specified in Article 2;

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

(h) “Portuguese insurance period” means the period of contributions or any equivalent period which has been or can be used to acquire the right to a benefit under Portuguese
Note 2

legislation, but does not include any period considered under paragraph 1 of Article 18 as a Portuguese insurance period;

(i) “previous Agreement” means the Agreement between the Government of Australia and the Government of the Republic of Portugal on Social Security signed on 30 April 1991;

(j) “territory” means, in relation to Australia, Australia as defined in the legislation of Australia; and, in relation to Portugal, the territory of the Republic of Portugal on the European continent and the archipelagos of the Azores and Madeira;

(k) “widow” means:

in relation to Australia:
- a de jure widow; or
- a woman who was a member of a couple for 3 years immediately before her partner died and was wholly or mainly financially maintained by him;
- but does not include a woman who has a partner;

and in relation to Portugal:
- a de jure widow; or
- a legally separated woman or divorced woman entitled to alimony; or
- a person covered by paragraph 1 of Article 2020 of the Civil Law Code.

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

ARTICLE 2
Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:
(a) in relation to Australia:

(i) the Acts forming the social security law in so far as the law provides for, applies to or affects the following benefits:

- age pension;
- disability support pension for the severely disabled;
- wife pension;
- carer payment;
- pensions payable to widows;
- bereavement allowance;
- additional child amount;
- double orphan pension; and

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

(b) in relation to Portugal:

(i) the legislation relating to the general scheme (including the voluntary social insurance scheme) and the special schemes (excluding provisions for civil servants or persons treated as such) of the social security system in respect of the following benefits:

- old age pension;
- invalidity pension;
- survivors’ pension and death grant;
- supplement for care;
- sickness and maternity benefits;
- unemployment benefit;
- funeral grant; and
- family allowance for children and young people of pensioners;
Note 2

(ii) the legislation relating to work injuries and occupational diseases pensions; and

(iii) the legislation relating to the non-contributory scheme in respect of old age, invalidity and survivors’ pensions and supplement for care.

2. Unless otherwise provided in this Agreement, the laws referred to in paragraph 1 shall not include any treaty or other international Agreement or supra-national legislation on social security which may be in force between either Party and a third State or third States, or laws or regulations promulgated for their specific implementation.

3. This Agreement shall also apply to any laws and regulations which extend the existing legislation to new categories of beneficiaries if the Government of the Party concerned does not notify of an objection in writing to the Government of the other Party within 6 months from the official publication of those laws and regulations.

ARTICLE 3
Personal Scope

This Agreement shall apply to any person who:

(a) is or has been an Australian resident; or
(b) is or has been subject to the legislation of Portugal;

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

ARTICLE 4
Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations regarding eligibility for and payment of benefits which arise whether directly under the legislation of that Party or by virtue of this Agreement.
ARTICLE 5
Voluntary Social Insurance

As soon as an Australian citizen is deemed to be a resident in Portugal that person shall be entitled to register with the voluntary social insurance scheme under the legislation of Portugal on the same basis as a national of Portugal.

ARTICLE 6
Export of Benefits

1. Subject to paragraph 4, benefits of one Party are also payable in the territory of the other Party.

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

3. Where qualification for a benefit of one Party is subject to limitations as to time, then reference to that Party in those limitations shall be read also as references to the territory of the other Party.

4. Notwithstanding any provision of this Agreement, unemployment benefit under the legislation of Portugal and Portuguese pensions specified in subparagraph 1(b)(iii) of Article 2 shall not be paid outside the territory of Portugal.

PART II – COMMON PROVISIONS ON COVERAGE

ARTICLE 7
Application of Legislation

1. Except as otherwise provided in this Agreement, the persons to whom this Agreement applies shall be covered by:

   (a) Portuguese legislation if they are employed or resident in Portugal; or

   (b) Australian legislation if they are Australian residents.
Note 2

2. Where a person is entitled to claim a benefit under the legislation of a Party that legislation shall also apply to that person.

ARTICLE 8
Decisions on Social Security Coverage

The Competent Authorities will, in accordance with their countries’ respective legislation, decide on the social security coverage to be applied in the best interests of a person.

PART III PROVISIONS FOR AVOIDING DOUBLE COVERAGE

ARTICLE 9
Purpose of Part

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

ARTICLE 10
Application of Part

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

ARTICLE 11
Diplomatic and Consular Relations

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

ARTICLE 12
Application of legislation

1. Unless otherwise provided in paragraphs 2, 4 and 5, if an employee works in the territory of one Party, the employer of the employee and
the employee shall in respect of the work and the remuneration paid for
the work be subject only to the legislation of that Party.

2. If an employee:

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

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

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

   (d) was sent to work in the territory of the second Party and a
       period of 4 years has not elapsed from that time; and

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

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

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

4. Despite anything in paragraph 2:

   (a) where an employee is employed in an official administrative
       service in respect of Portugal and is seconded in the course of
       that employment to the territory of Australia, the legislation of
       Australia shall not apply to the employee and the employer in
       respect of that employment and the employee and employer
       shall remain subject to the legislation of Portugal in respect of
       that employment;

   (b) where an employee is employed in the Government
       employment in respect of Australia and is seconded in the
course of that employment to the territory of Portugal, the legislation of Portugal shall not apply to the employee and the employer in respect of that employment and the employee and the employer shall remain subject to the legislation of Australia in respect of that employment.

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

ARTICLE 13
Exception agreements

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

   (a) extend the period of 4 years referred to in subparagraph 2(d) of Article 12 for any employee; or

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

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

   (a) a class of employees; and/or

   (b) particular work or particular type of work (including work that has not occurred at the time the agreement is made).
PART IV- PROVISIONS RELATING TO BENEFITS

SECTION I - AUSTRALIAN BENEFITS

ARTICLE 14

Residence or Presence in Portugal or a Third State

1. Where a person would not qualify for a benefit under the legislation of Australia or by virtue of this Agreement only because he or she was not an Australian resident and present in Australia on the date on which the claim for that benefit would be lodged but that person:

   (a) is an Australian resident or a resident of Portugal (or a third country with which Australia has implemented an agreement on social security that includes provision for cooperation in the lodgement and determination of claims for benefits); and

   (b) is physically in Australia, or in Portugal or that third State;

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

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

3. For the purposes of qualification for a carer payment as defined in this Agreement, which is payable by virtue of this Agreement, a person who is in Portugal shall be regarded as being in Australia.

ARTICLE 15

Partner Related Australian Benefits

For the purposes of this Agreement, a person who receives an Australian benefit due to the fact that the partner of that person receives, by virtue of this Agreement, another Australian benefit shall be deemed to receive that first-mentioned benefit by virtue of this Agreement.
ARTICLE 16
Totalisation for Australia

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

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

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

(c) a Portuguese insurance period,

then that Portuguese insurance period shall be deemed to be a period in which that person was an Australian resident

- only if that Portuguese insurance period has already been used or can be used at the time of totalisation, to obtain a Portuguese benefit, and

- only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.

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

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

(b) has accumulated a Portuguese insurance period in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a);

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

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

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

(a) for the purposes of an Australian benefit claimed by a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least 6 months must be continuous; and

(b) for the purposes of an Australian benefit claimed by an Australian resident, there shall be no minimum period of residence in Australia required.

ARTICLE 17
Calculation of Australian Benefits

1. Subject to paragraphs 2 and 4, where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia but, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, only a proportion of any Portuguese benefit paid to that person under the legislation specified in subparagraphs 1(b)(i) or (ii) of Article 2 shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of residence in Australia (not exceeding 300) by the amount of that Portuguese benefit and dividing that product by 300.

2. A person referred to in paragraph 1 shall be entitled to receive the concessional assessment of income described in that paragraph only for any period during which the rate of that person’s Australian benefit is proportionalised under the legislation of Australia.

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

4. When an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is resident in the territory of
Note 2

Portugal, Australia shall disregard, when assessing the income of that person:

(a) any benefit paid to that person under the legislation specified in subparagraph 1(b)(iii) of Article 2; and

(b) any non-contributory supplement paid to that person by Portugal to bring the amount of that person’s Portuguese benefit to the minimum level guaranteed under the legislation of Portugal.

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

(a) calculating that person’s income according to the legislation of Australia but disregarding in that calculation the Portuguese benefit or benefits received by that person;

(b) deducting the amount of the Portuguese benefit or benefits received by that person from the maximum rate of that Australian benefit; and

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

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

7. The provisions in paragraph 5 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
SECTION II – PORTUGUESE BENEFITS

SUB-SECTION I – OLD-AGE, INVALIDITY AND SURVIVORS’ PENSIONS

ARTICLE 18
Totalisation for Portugal

1. For the purposes of this Agreement, when insurance periods completed under the Portuguese legislation are:

(a) less than the period required for the acquisition, retention or recovery of the right to benefits under that legislation, and

(b) have the duration of at least one calendar year

then the periods of Australian working life residence shall be deemed as Portuguese insurance periods provided that they do not coincide.

2. For the purposes of this Article the upper age limit for a woman, set in the definition of a period of Australian working life residence in the legislation of Australia, shall be raised to the age pension age for a woman for the purposes of claiming an old age pension under the legislation of Portugal.

ARTICLE 19
Rules for the Granting of Portuguese Pensions

1. Subject to paragraph 3, the Portuguese Competent Institution shall determine the rate of Portuguese benefits in accordance with Portuguese legislation and, in relation to old age pension, invalidity pension and survivors’ pension, the calculation shall be based directly and exclusively on Portuguese insurance periods and equivalents completed under Portuguese legislation.

2. If the total of any pensions paid by both Parties to a person residing in Portugal is less than the minimum pension fixed by Portuguese legislation, the Competent Institution of Portugal will pay to that person an amount equal to that difference.
Note 2

3. For the purposes of calculating any supplement to be paid by Portugal to an Australian resident to bring Portuguese benefit paid, other than by virtue of this Agreement, to that person to the minimum level fixed by Portuguese legislation, any Australian benefit paid to that person by virtue of this Agreement shall not be taken into account.

4. Entitlement to Portuguese pensions paid by virtue of this Agreement shall have regard to occupational activity carried out in the territory of Australia as if that activity was carried out in the territory of Portugal.

5. In the assessment of income for the calculation of the rate of a spouse’s supplement under the legislation of Portugal, wife pension payable under the legislation of Australia shall not be taken into account.

SUB-SECTION II - OTHER PORTUGUESE BENEFITS

ARTICLE 20

Sickness and Maternity Benefits

Where a person, after his or her last arrival in the territory of Portugal, has accomplished a contribution period under Portuguese legislation for the purposes of eligibility for a sickness or maternity benefit under that legislation, the periods of Australian working life residence shall be deemed as periods accomplished under Portuguese legislation, provided that they do not coincide.

ARTICLE 21

Unemployment Benefit

Where a person, after his or her last arrival in the territory of Portugal, has accomplished a contribution period of at least four weeks under Portuguese legislation for the purposes of eligibility for unemployment benefit under that legislation, the periods of Australian working life residence, during which an occupational activity has been pursued as an employee or Australian newstart allowance has been awarded as a result of no longer being an employee, shall be deemed as periods accomplished under Portuguese legislation, provided that they do not coincide.
ARTICLE 22  
*Family benefits for pensioners*

Family allowances for children and young people payable under the legislation of Portugal shall be payable by virtue of this Agreement to pensioners who are residing in Australia and receiving a pension under the legislation of Portugal be they Australian citizens or Portuguese nationals and those family allowances shall for the purposes of reciprocity in relation to this Agreement be regarded as the Portuguese benefit equivalent to Australian additional child amount.

ARTICLE 23  
*Pensions for Accidents at Work and Occupational Diseases*

1. Pensions related to incapacity due to work-related accidents or occupational diseases according to Portuguese legislation shall be paid by the competent Portuguese institution whenever a person is subject to the legislation applied by it at the time the accident occurred or at the date the occupational disease has been contracted if that person has been pursuing an occupational activity likely to cause that disease according to the legislation of Portugal.

2. In order to determine the permanent incapacity rate for work-related accidents or occupational diseases under Portuguese legislation, work-related accidents or occupational diseases which qualified a person for a benefit under Australian legislation shall be deemed to have occurred under Portuguese legislation.

PART V- MISCELLANEOUS PROVISIONS

ARTICLE 24  
*Lodgement of Documents*

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Party in accordance with administrative arrangements made pursuant to Article 28 at any time after the Agreement enters into force.

2. For the purpose of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of one Party shall be considered as the date of lodgement of that document with the Competent Institution of the other.
Note 2

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

3. The reference in paragraph 2 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, the respective legislation.

ARTICLE 25
Determination of Claims

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

   (a) a period as an Australian resident and a Portuguese insurance period; and

   (b) any event or fact which is relevant to that entitlement,

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

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

3. Where:

   (a) a benefit is paid or payable by a Party to a person in respect of a past period;

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

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

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

4. Where the first Party has not yet paid the arrears of benefit described in paragraph 3 to the person:

(a) that Party shall, at the request of the other Party, pay the amount of the debt described in paragraph 3 to the other Party and shall pay any excess to the person in line with the provisions set out in administrative arrangements made in accordance with Article 28; and

(b) any shortfall in those arrears may be recovered by the other Party.

5. A reference in paragraph 3 or 4 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the Acts forming the social security law of Australia as amended from time to time, and in relation to Portugal means any pension, benefit, allowance or advance made by a Competent Institution including overpayments which arise because of the payment of Portuguese and Australian benefits.

ARTICLE 26
Payment of Benefits

1. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively from the time the restrictions were imposed.

2. A Party that imposes restrictions described in paragraph 1 shall inform the other Party of those restrictions within one calendar month of their imposition and shall adopt the measures described in paragraph 1 within three months of the imposition of those restrictions. If the other Party is not so informed or if the necessary measures are not adopted
within the set time, the other Party may treat such a failure as a material breach of the Agreement and as sufficient justification for termination or suspension of the Agreement between the Parties.

3. A benefit payable by a Party by virtue of this Agreement to a person outside the territory of that Party shall be paid without deduction for government administrative fees and charges for processing and paying that benefit.

**ARTICLE 27**  
*Exchange of Information and Mutual Assistance*

1. The Competent Authorities shall:

   (a) advise each other of laws that amend, supplement or replace the legislation of their respective Parties for the application of this Agreement, promptly after the first-mentioned laws are made;

   (b) advise each other directly of internal action to implement this Agreement and any Administrative Arrangement adopted for its implementation; and

   (c) advise each other of any technical problems encountered when applying the provisions of this Agreement or of any Administrative Arrangement made for its implementation.

2. The Competent Institutions of both Parties shall:

   (a) advise each other of any information necessary for the application of this Agreement or of the respective legislation of the Parties concerning all matters within their area of competence arising under this Agreement or under those laws;

   (b) assist one another in relation to the determination of any benefit under this Agreement or the respective legislation within the limits of and according to their own laws; and

   (c) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and
in the circumstances specified in administrative arrangements made in accordance with Article 28.

3. The assistance referred to in paragraphs 1 and 2 shall be provided free of charge, subject to any Administrative Arrangement made pursuant to Article 28.

4. Any information about a person which is transmitted in accordance with this Agreement to a Competent Institution shall be protected in the same manner as information obtained under the legislation of that Party.

5. Notwithstanding any laws or administrative practices of a Party, no information concerning a person which is received by that Party from the other Party shall be transferred or disclosed to any other country or to any other organisation within that other country without the prior written consent of that other Party.

6. In no case shall the provisions of paragraphs 1, 2 and 3 be construed so as to impose on the Competent Authority or Competent Institution of a Party the obligation:

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

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Party.

7. In the application of this Agreement, the Competent Authority and the Competent Institutions of a Party may communicate with the other in the official language of that Party.

8. In this Article “legislation” means all the laws referred to in Article 2 without any of the restrictions contained in Article 2.

ARTICLE 28
Administrative Arrangements

The Competent Authorities of the Parties shall make whatever administrative arrangements are necessary in order to implement this Agreement.
Note 2

ARTICLE 29
Resolution of difficulties

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

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

ARTICLE 30
Review of Agreement

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

PART VI– TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 31
Transitional Provisions

Where, on the date on which this Agreement enters into force, a person:

(a) is in receipt of a benefit by virtue of the previous Agreement; or
(b) is qualified to receive a benefit by virtue of the previous Agreement and, where a claim for that benefit is required, has claimed that benefit,

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

ARTICLE 32
Entry into force

1. This Agreement shall enter into force on the first day of the second month following that in which the Parties notify each other through the diplomatic channel that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalised.
2. Subject to the provisions of Article 31, the previous Agreement shall terminate on entry into force of this Agreement.

ARTICLE 33
Termination

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

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

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

(b) prior to that date have lodged claims for, and would be entitled to receive, benefits,

by virtue of this Agreement or the Agreement signed on 30 April 1991 or

(c) immediately before the date of termination are subject only to the legislation of one Party by virtue of paragraph 2 or 4 of Article 12 provided that the employee continues to satisfy the criteria of that paragraph.

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

DONE in 2 copies at LISBON this THIRD day of SEPTEMBER, TWO THOUSAND AND ONE in the English and Portuguese languages, both texts being equally authoritative.

FOR AUSTRALIA: FOR THE REPUBLIC OF PORTUGAL:
Protocol to the Agreement between Australia and the Republic of Austria on Social Security

Australia and the Republic of Austria

being desirous of amending and supplementing the Agreement on Social Security between them done at Canberra on the first day of April 1992 have agreed as follows:

Article I

1. In this Protocol “Agreement” means the Agreement between Australia and the Republic of Austria on Social Security done on the first day of April 1992 at Canberra.

2. In the application of this Protocol any term defined in the Agreement shall, unless the context otherwise requires, have the same meaning.
Article II

1. (a) In subparagraph 1(c) of Article 1 of the Agreement, the words “the Secretary to the Department of Social Security” shall be deleted and replaced by the words “the Secretary of the department responsible for the legislation in subparagraph 1(a) of Article 2”.

(b) Subparagraph 1(d) of Article 1 of the Agreement shall be deleted and replaced by the following:

“(d) “institution” means, in relation to a Party, the institution or agency responsible for the administration of all or part of that Party’s legislation;”

(c) Subparagraph 1(e) of Article 1 of the Agreement shall be deleted and replaced by the following:

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

(d) Subparagraph 1(i) of Article 1 of the Agreement shall be deleted and replaced by the following:

“(i) “carer payment” means a carer payment payable to a person who is caring for that person’s partner who is in receipt of an Australian disability support pension or age pension;”

(e) Subparagraph 1(j) of Article 1 of the Agreement shall be deleted and replaced by the following:

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

2. Subparagraph 1(a) of Article 2 of the Agreement shall be deleted and replaced by the following:
Notes to the *Social Security (International Agreements) Act 1999*

**Note 2**

“(a) in relation to Australia, the Acts and regulations forming the social security law to the extent they provide for, apply to, or affect:

(i) age pensions,
(ii) disability support pensions,
(iii) wife pensions,
(iv) carer payments,
(v) pensions payable to widowed persons, and
(vii) double orphan pensions; and”

3. Paragraph 3 of Article 2 of the Agreement shall be deleted and replaced by the following:

“(3) Notwithstanding the provisions of paragraph 1, the legislation of Australia shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security.”

4. In subparagraph 4(b) of Article 5 of the Agreement the words “carer pension” and the words “rental allowance” shall be deleted and replaced by the words “carer payment” and the words “rent assistance” respectively.

5. In paragraph 4 of Article 5 of the Agreement the following new subparagraph (e) shall be inserted:

“(e) Where a double orphan pension would be payable to a person under the legislation of Australia, in respect of a young person whose sole surviving parent died while that young person was an Australian resident, if that person and that young person were residents of Australia, that pension shall, subject to the provisions of the legislation of Australia, be payable while that person and that young person are residents of Austria.”

6. In Article 5 of the Agreement the following new paragraph (6) and paragraph (7) shall be inserted:

“(6) Australian legislation which provides for, applies to or affects disability support pension for a person who is not severely disabled shall not be affected by paragraph 4(d).
(7) Notwithstanding anything else in this Article, Australian disability support pension shall not be payable for more than 26 weeks to a person who is not severely disabled while that person is outside Australia.”

7. In paragraph 4 of Article 6 of the Agreement the words “minimum period of residence in Australia” shall be deleted and replaced by the words “minimum period of Australian working life residence”.

8. In paragraph 6 of Article 7 of the Agreement the words “married person” shall be deleted and replaced by the words “member of a couple”.

9. In Article 7 of the Agreement the following new paragraph (8) shall be inserted:

“(8) In paragraphs 1 and 4 of this Article references to Australian benefits do not include double orphan pension.”

10. Article 8 shall be deleted and replaced by the following:

“Article 8
A person who receives an Australian wife pension due to the fact that the partner of that person receives, by virtue of this Agreement, another Australian benefit shall, for the purposes of this Agreement, be deemed to receive that wife pension by virtue of this Agreement.”

11. Article 9 of the Agreement shall be deleted and replaced by the following:

“Article 9
(1) Where the Austrian legislation makes the acquisition, maintenance or recovery of entitlement to benefits conditional upon the completion of periods of insurance in Austria, the institution which applies that legislation shall take account, as far as necessary, of periods of Australian working life residence as if they were periods of insurance in Austria.”
Note 2

(2) Where the Austrian legislation makes the award of certain benefits conditional upon the completion of periods of insurance in Austria in an occupation covered by special schemes or in a specified occupation or employment, then from the periods of Australian working life residence only those periods completed under a corresponding scheme, or, failing that, in the same occupation or, where appropriate, in the same employment, shall be taken into account for the award of such benefits.

(3) Where the Austrian legislation provides that the period of payment of a pension shall prolong the reference period during which periods of insurance in Austria must be completed, periods during which a corresponding benefit has been awarded under the Australian legislation shall prolong the aforesaid reference period.

(4) Periods of Australian working life residence, during which the person concerned was employed or self-employed, shall be treated as periods of contributions of obligatory insurance."

12. Article 10 of the Agreement shall be deleted and replaced by the following:

“Article 10

“(1) Where entitlement to a benefit exists under the Austrian legislation without the application of Article 9, the competent Austrian institution shall determine the amount of the benefit in accordance with the Austrian legislation on the basis of periods of insurance in Austria exclusively.

(2) Where entitlement to a benefit exists under the Austrian legislation only with the application of Article 9, the competent Austrian institution shall determine the amount of the benefit in accordance with the Austrian legislation on the basis of periods of insurance in Austria exclusively and taking into account the following provisions:
(a) Benefits or parts of benefits the amount of which does not depend on the duration of periods of insurance in Austria shall be calculated in proportion to the ratio of the duration of the periods of insurance in Austria to be taken into account for the calculation under the Austrian legislation and the period of 30 years, but shall not exceed the full amount.

(b) Where periods after the contingency arises are to be taken into account for the calculation of invalidity or survivors’ benefits, such periods shall be taken into account only in proportion to the ratio of the duration of the periods of insurance in Austria to be taken into account for the calculation under the Austrian legislation and two-thirds of the number of full calendar months between the date on which the person concerned reached the age of 16 years and the date on which the contingency occurred, but shall not exceed the full period.

(c) Subparagraph (a) shall not apply:

   (i) to benefits resulting from supplementary insurance; or

   (ii) to means-tested benefits or parts of benefits designed to ensure a minimum income.

(3) Where the periods of insurance in Austria to be taken into account under the Austrian legislation for the calculation of the benefit are in aggregate less than twelve months, and no entitlement to a benefit has been established under the Austrian legislation exclusively on the basis of these periods, no benefit under that legislation shall be paid.”

13. Articles 11, 12 and 13 of the Agreement shall be deleted.
Notes to the *Social Security (International Agreements) Act 1999*

**Note 3**

**Article III**

1. Unless otherwise provided in this Article, this Protocol shall enter into force on the first day of the third month following the month in which the last of the notes are exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Protocol have been finalised.

2. Paragraph 7 of Article 5 of the Agreement as amended by this Protocol shall not apply to the payability of an Australian disability support pension payable to a person in Austria on the day before the date of entry into force of this Protocol.

3. Paragraph 1 of Article 10 of the Agreement as amended by this Protocol, shall have effect from 1 January 1994.

4. Paragraph 2 of Article 10 of the Agreement as amended by this Protocol, shall have effect from 1 January 1997.

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

DONE in two copies at Vienna this twenty-sixth day of June 2001 in the English and German languages, each text being equally authoritative.

For Australia: Max Hughes
For the Republic of Austria: Christian Prosl

[Signatures omitted]

As at 1 July 2002 the amendments are not incorporated in this compilation.

**Note 3**

*Social Security (International Agreements) Act 1999 Amendment Regulations 2002 (No. 3) (SR 2002 No. 33)*

The following amendments commence on 1 October 2002:

328 *Social Security (International Agreements) Act 1999*
Schedule 1

[1] After Schedule 12

insert

Schedule 13—United States of America

Note See section 5.

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA ON SOCIAL SECURITY

The Government of Australia and the Government of the United States of America (hereinafter “the Parties”),

Being desirous of regulating the relationship between their two countries with respect to social security benefits and coverage, have agreed as follows:

PART I
General Provisions

Article 1
Definitions

1. For the purpose of this Agreement:
   (a) “Agency” means,
       as regards the United States, the Social Security Administration, and
       as regards Australia, the institution or agency responsible for the administration of the laws;
   (b) “benefit” means in relation to a Party, a benefit, pension or allowance for which provision is made in the laws of that Party, and includes any additional amount, increase or supplement for which a beneficiary is qualified but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
   (c) “carer payment” means, in relation to Australia, a carer payment payable to the partner of a person in receipt of an Australian benefit.
Notes to the *Social Security (International Agreements) Act 1999*

**Note 3**

(d) “Competent Authority” means,

as regards the United States, the Commissioner of Social Security, and

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

(e) “laws” means,

as regards the United States, the laws and regulations specified in subparagraph 1(a) of Article 2, and

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

(f) “national” means,

as regards the United States, a national of the United States as defined in Section 101, Immigration and Nationality Act, as amended, and

as regards Australia, a citizen of Australia;

(g) “period of Australian working life residence”, in relation to a person, means, unless otherwise provided in this Agreement, a period:

(i) defined as such in the laws of Australia; and

(ii) during which the person was employed or self-employed or the person’s employer was subject to the laws specified in subparagraph 1(b)(ii) of Article 2;

but does not include any United States period of coverage deemed pursuant to Article 9 to be a period in which that person was an Australian resident.

(h) “social security laws” means, in relation to Australia, all the Acts forming the social security law without any limitation, including the limitation imposed by Article 2.

(i) “United States period of coverage” means a period credited as a quarter of coverage under the laws of the United States, or any
Notes to the Social Security (International Agreements) Act 1999

Note 3

equivalent period that may be used to establish the right to a benefit under the laws of the United States;

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

2. Any term used in this Agreement and not defined in this Article shall have the meaning assigned to it in the applicable laws.

Article 2

Scope

1. For the purpose of this Agreement, the applicable laws are:

(a) As regards the United States, the laws governing the Federal old-age, survivors, and disability insurance program:
   - Title II of the Social Security Act and regulations pertaining thereto, except sections 226, 226A and 228 of that title and regulations pertaining to those sections,
   - Chapters 2 and 21 of the Internal Revenue Code of 1986 and regulations pertaining to those chapters;

(b) As regards Australia,
   (i) the Acts forming the social security law insofar as the law provides for, applies to or affects the following benefits:
      (A) age pension;
      (B) disability support pension for the severely disabled;
      (C) pensions payable to widowed persons; and
      (D) carer payment.
   (ii) the law concerning the superannuation guarantee (which at the time of signature of this Agreement is contained in the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Regulations).

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

(a) persons receiving age pension; or
Note 3

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

3. Unless otherwise provided in this Agreement, the laws referred to in paragraph 1 shall not include treaties or other international agreements on social security that may be concluded between one of the Parties and a third State, or laws or regulations promulgated for their specific implementation.

4. This Agreement shall also apply to future laws which amend or supplement the laws specified in paragraph 1 of this Article.

Article 3
Personal Scope
This Agreement shall apply to any person who:
(a) is or has been an Australian resident; or
(b) is or has been subject to the laws of Australia; or
(c) is or has been subject to the laws of the United States and, where applicable, to other persons in regard to the rights they derive from a person described above.

Article 4
Equality of Treatment
Persons designated in Article 3 who reside in the territory of a Party shall receive equal treatment with nationals of that Party in the application of its laws regarding eligibility for and the payment of benefits.

Article 5
Export of Benefits
1. Unless otherwise provided in this Agreement, any provision of the laws of a Party which restricts entitlement to or payment of benefits solely because the person resides outside or is absent from the territory of that Party shall not be applicable to the persons who reside in the territory of the other Party.

2. Where the laws of a Party provide or allow that a benefit be payable in a third country, then that benefit, when payable by virtue of Part III, is also payable in that third country.

3. Where qualification for an Australian benefit is subject to limitations as to time, then references to Australia in those limitations shall be read also as references to the United States when that benefit is payable by virtue of this Agreement.
4. A benefit payable by a Party by virtue of this Agreement or under its laws shall be paid by that Party without the deduction of administrative fees and charges by the government or the corresponding Competent Authority for processing and paying that benefit, when the person qualifying for the benefit is in the territory of the other Party.

5. Any provisions of Australian laws which prohibit the payment of an Australian benefit to a former Australian resident who:
   (a) returns to Australia to again become an Australian resident;
   (b) claims an Australian benefit; and
   (c) departs Australia within a period specified in that law,
shall not apply to a person who receives that benefit by virtue of the Agreement.

6. Section 202(t)(11) (E) of the Social Security Act of the United States shall not apply to an Australian national unless he or she is a resident of the United States, Australia or a third country with which the United States has a Social Security agreement in force concluded pursuant to section 233 of the Social Security Act.

PART II
Provisions Concerning Applicable Laws

Article 6
Coverage Provisions

1. This Part only applies, with respect to an employee, or the employer of that employee, where either or both of the following circumstances occur:
   (a) without the application of this Part an employee or the employer of that employee would otherwise be covered by both the laws of Australia and the United States;
   (b) the employee has been sent from the territory of the United States to the territory of Australia in accordance with paragraph 3 and, based upon documentation issued by the Agency of the United States, the employee and employer are subject to United States laws.

2. Except as otherwise provided in this Article, a person employed within the territory of one of the Parties and the person’s employer shall, with respect to that employment, be subject to the laws of only that Party.

3. Where a person who is normally employed in the territory of one Party by an employer in that territory is sent by that employer to the territory
Note 3

of the other Party for a temporary period, the person and the person’s employer shall be subject to the laws of only the first Party as if the employee were employed in the territory of the first Party provided that the period of employment in the territory of the other Party is not expected to and does not exceed 5 years. After 5 years, any further period of employment shall be subject to the laws of the other Party.

4. For the purposes of applying paragraph 3 in the case of an employee who is sent from the territory of the United States by an employer in that territory to the territory of Australia, that employer and an affiliated company of the employer (as defined under the laws of the United States) shall be considered one and the same, provided that the employment would have been covered under United States laws in the absence of this Agreement.

5. For the purposes of applying paragraph 3 in the case of an employee who is sent from the territory of Australia by an employer in that territory to the territory of the United States, that employer and a related entity of the employer shall be considered one and the same. An entity is a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

6. Paragraph 3 shall apply where a person who has been sent by his or her employer from the territory of a Party to the territory of a third State is subsequently sent by that employer from the territory of the third State to the territory of the other Party.

7. Where a person who is a resident of the United States works in the capacity of a self-employed person, the person shall be subject to the laws of only the United States.

8. Where a national of the United States who is a resident of Australia works in the capacity of a self-employed person, the person shall not be subject to the laws of the United States.

9. Where the same activity is considered to be self-employment under the laws of one Party and employment under the laws of the other Party, that activity shall be treated according to the provisions of this Article concerning self-employment.

10. A person, or that person’s employer, who would otherwise be covered under the laws of both Parties with respect to employment of that person as an officer or member of a crew on a ship or aircraft shall, with respect to that employment, be subject only to the laws of the Party of which that person is a resident.
11. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of April 18, 1961, or of the Vienna Convention on Consular Relations of April 24, 1963.

12. If an employee:
   (i) is subject to the laws of one Party (“the first Party”);  
   (ii) was sent, whether before, on or after the entry into force of this Agreement, by the Government of the first Party to work in the territory of the other Party (“the second Party”);  
   (iii) is working in the territory of the second Party in the employment of the Government of the first Party;  
   (iv) is not working permanently in the territory of the second Party; and  
   (v) is not exempt from the laws of the second Party by virtue of the conventions mentioned in paragraph 11;

the Government of the first Party and the employee shall be subject only to the laws of the first Party, and, if the spouse of the employee also meets the conditions specified in subparagraphs (iii)-(v), the spouse and the Government of the first Party shall be subject only to the laws of the first Party for that employment. For the purposes of this paragraph, “Government” includes, in relation to the United States, an instrumentality of the United States and, in relation to Australia, a political subdivision or local authority of Australia.

13. The Competent Authorities of the two Parties may for the purposes of this Article by agreement in writing:
   (a) extend the period of 5 years referred to in paragraph 3 for any employee; or
   (b) provide that an employee is deemed to work in the territory of a particular Party or on a ship or aircraft in international traffic under the laws of a particular Party and is subject only to the laws of that Party.

14. Any agreement made under paragraph 13 may apply to either or both of the following:
   (a) a class of employees;  
   (b) particular work or a particular type of work (including work that has not occurred at the time such agreement is made).
PART III
Provisions on Benefits

Article 7
United States Benefits

1. Where a person has completed at least six quarters of coverage under United States laws, but does not have sufficient periods of coverage to satisfy the requirements for entitlement to benefits under United States laws, the Agency of the United States shall take into account, for the purpose of establishing entitlement to benefits under this Article, periods of Australian working life residence which do not coincide with periods of coverage already credited under United States laws.

2. In determining eligibility for benefits under paragraph 1 of this Article, the Agency of the United States shall credit one quarter of coverage for every three months of Australian working life residence certified by the Agency of Australia; however, no period of Australian working life residence shall be credited for any calendar quarter already credited as a quarter of coverage under United States laws. The total number of quarters of coverage to be credited for a year shall not exceed four.

3. Where entitlement to a benefit under United States laws is established according to the provisions of paragraph 1, the Agency of the United States shall compute a pro rata Primary Insurance Amount in accordance with United States laws based on (a) the person’s average earnings credited exclusively under United States laws and (b) the ratio of the duration of the person’s periods of coverage completed under United States laws to the duration of a coverage lifetime as determined in accordance with United States laws. Benefits payable under United States laws shall be based on the pro rata Primary Insurance Amount.

4. Entitlement to a benefit from the United States which results from paragraph 1 shall terminate with the acquisition of sufficient periods of coverage under United States laws to establish entitlement to an equal or higher benefit without the need to invoke the provision of paragraph 1 of this Article.

Article 8
Residence or Presence in the United States or a Third State for Australian Benefits

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

(a) is an Australian resident or residing in the United States or a third State with which Australia has concluded an agreement on social security that includes provision for cooperation in the assessment and determination of claims for benefits; and

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

2. For the purposes of qualification for a carer payment as defined in this Agreement, which is payable by virtue of this Agreement, a person who is in the United States shall be regarded as being in Australia.

**Article 9**
Totalisation in Relation to Australian Benefits

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

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

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

(c) a United States period of coverage,

then for the purposes of a claim for that Australian benefit, that United States period of coverage shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the laws of Australia, to be a period as an Australian resident.

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

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

(b) has accumulated United States periods of coverage in two or more separate periods that equal or exceed in total the period referred to in subparagraph (a),

the total of the United States periods of coverage shall be deemed to be one continuous period.
Note 3

3. For all purposes of this Article, where a period as an Australian resident and a United States period of coverage coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident but when it is not possible for the United States Agency to determine the time when specific periods of coverage were completed in any one calendar year, it shall be assumed that those periods of coverage do not coincide with periods in that year as an Australian resident but in no case shall the total of all those periods exceed one calendar year.

4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be:
   (a) for the purposes of an Australian benefit that is payable to a person who is outside Australia, the minimum period required shall be 12 months, of which at least 6 months must be continuous; and
   (b) for the purpose of an Australian benefit that is payable to a person who is in Australia, there shall be no minimum period.

Article 10
Calculation of Australian Pro Rata Benefits

1. Subject to paragraphs 2, 3 and 4, where an Australian benefit is payable by virtue of this Agreement or otherwise, to a person who is outside Australia the rate of that benefit shall be determined according to the laws of Australia but, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, only a proportion of any United States benefit paid to that person under the laws specified in Article 2(1)(a) shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of working life residence in Australia (not exceeding 300) by the amount of that United States benefit and dividing that product by 300.

2. A person referred to in paragraph 1 shall be entitled to receive the concessional assessment of income described in that paragraph only for any period during which the rate of that person’s Australian benefit is proportionalised under the laws of Australia.

3. When an Australian benefit is payable by virtue of this Agreement or otherwise to a person who is outside Australia, benefits payable under the Supplemental Security Income program of the United States and other benefits of a similar character payable under the laws of the United States or any political subdivision thereof shall not be counted...
as income for the purposes of calculating the rate of an Australian benefit.

4. The provisions in paragraphs 1 and 3 shall continue to apply for 26 weeks where a person returns temporarily to Australia.

5. Subject to the provisions of paragraphs 6 and 7, where an Australian benefit is payable by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:
   (a) calculating that person’s income according to the laws of Australia but disregarding in that calculation any United States benefit received by that person and by the partner of that person;
   (b) deducting the amount of the United States benefit received by that person from the maximum rate of that Australian benefit; and
   (c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the laws of Australia, using as the person’s income the amount calculated under subparagraph (a).

6. The provisions in paragraph 5 shall continue to apply for 26 weeks where a person departs temporarily from Australia.

7. Where the rate of a benefit calculated in accordance with paragraph 5 is less than the rate of that benefit which would be payable under paragraph 1 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.

8. Where a member of a couple is, or both that person and his or her partner are, entitled to a United States benefit or benefits, each of them shall be deemed, for the purpose of paragraphs 1 and 5 and for the laws of Australia, to be entitled to half of either the amount of that benefit or total of both of those benefits, as the case may be.

**Article 11**

**Australian Working Life Residence**

For the purposes of Articles 9 and 10, a period of Australian working life residence in relation to a person means a period defined as such in the laws of Australia.
PART IV
Miscellaneous Provisions

Article 12
Administrative Arrangements
The Competent Authorities of the two Parties shall:
(a) make all necessary administrative arrangements for the implementation of this Agreement and designate liaison agencies;
(b) communicate to each other information concerning the measures taken for the application of this Agreement; and
(c) communicate to each other, as soon as possible, information concerning all changes in their respective laws which may affect the application of this Agreement.

Article 13
Exchange of Information and Mutual Assistance
1. The Competent Authorities and the Agencies of the Parties, within the scope of their respective authorities, shall assist each other in implementing this Agreement. This assistance shall be free of charge, subject to exceptions to be agreed upon in an administrative arrangement.
2. Unless otherwise required by the national statutes of a Party, information about an individual which is transmitted in accordance with the Agreement to that Party by the other Party shall be used exclusively for purposes of implementing the Agreement. Such information received by a Party shall be governed by the national statutes of that Party for the protection of privacy and confidentiality of personal data.
3. In no case shall paragraphs 1 or 2 be construed so as to impose on the Competent Authority or an Agency of a Party the obligation:
(a) to carry out administrative measures at variance with the statutes or the administrative practice of that or of the other Party; or
(b) to furnish information which is not obtainable under the statutes or in the normal course of the administrative practice of that or of the other Party.
Note 3

Article 14
Documents

1. Where the laws of a Party provide that any document which is submitted to the Competent Authority or Agency of that Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or Agency of the other Party in the application of this Agreement.

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

3. Copies of documents which are certified as true and exact copies by the Agency of one Party shall be accepted as true and exact copies by the Agency of the other Party, without further certification. The Agency of each Party shall be the final judge of the probative value of the evidence submitted to it from whatever source.

Article 15
Correspondence

The Competent Authorities and Agencies of the Parties may correspond directly with each other and with any person wherever the person may reside whenever it is necessary for the administration of this Agreement.

Article 16
Applications for Benefits

1. A written application for benefits filed with the Agency of one Party shall protect the rights of the claimants under the laws of the other Party if the applicant requests that it be considered an application under the laws of the other Party.

2. If an applicant has filed a written application for benefits with the Agency of one Party and has not explicitly requested that the application be restricted to benefits under the laws of that Party, the application shall also protect the rights of the claimants under the laws of the other Party if the applicant provides information at the time of filing indicating that the person on whose record benefits are claimed has completed periods under the laws of the other Party, as defined in subparagraphs 1(g)(i) or 1(i) of Article 1.

3. The provisions of Part III shall apply to benefits under United States laws only if an application is filed on or after the date this Agreement enters into force.
Note 3

**Article 17**

**Determination of Claims**

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
   (a) a period as an Australian resident and a United States period of coverage; and
   (b) any event which is relevant to that eligibility or entitlement, shall, subject to this Agreement, be taken into account to the extent that those periods or those events are applicable in regard to that person and whether they were accumulated or occurred before, on or after the date on which this Agreement enters into force. However, neither Party shall take into account such periods of coverage or residence that occurred prior to the earliest date for which periods of coverage or residence may be credited under its laws.

2. Where:
   (a) a benefit is paid by the United States to a person in respect of a past period whether by virtue of this Agreement or otherwise; and
   (b) for all or part of that period, Australia has paid to that person a pension, benefit or allowance under its social security laws; and
   (c) the amount of the pension, benefit or allowance paid by Australia would have been reduced had the benefit paid by the United States been paid during that period;

   then
   (d) the amount that would not have been paid by Australia had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period, shall be a debt due by that person to Australia and may be recovered by Australia; and
   (e) Australia may recover all or part of that debt under the provisions of the Acts forming the social security law of Australia.

3. This Agreement shall not establish any claim to payment of a benefit for any period before the date of the entry into force of the Agreement, or to a lump-sum death benefit under United States laws if the person died before the date of entry into force of the Agreement.
Article 18
Prescribed Time Limits and Appeals
1. Any claim, notice or written appeal which, under the laws of one Party, must have been filed within a prescribed period with the Agency of that Party, but which is instead filed within the same period with the Agency of the other Party, shall be considered to have been filed on time.
2. A written appeal against a decision made by the Agency of one Party may be validly filed with the Agency of either Party. The appeal shall be dealt with according to the procedure and laws of the Party whose decision is being appealed.
3. In relation to a decision made by the Agency of Australia, the reference in paragraph 2 to a written appeal is a reference to an appeal that may be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia.

Article 19
Currency
1. Payments under this Agreement may be made in the currency of the Party making the payments.
2. In case provisions designed to restrict the exchange or exportation of currencies are introduced by either Party, the Governments of both Parties shall immediately take measures necessary to ensure the transfer of sums owed by either Party under this Agreement.

Article 20
Resolution of Disputes
Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the Competent Authorities.

Article 21
Supplementary Agreements
This Agreement may be amended in the future by supplementary agreements which, from their entry into force, shall be considered an integral part of this Agreement. Such agreements may be given retroactive effect if they so specify.
Note 3

Article 22
Review of Agreement

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

PART V
Transitional and Final Provisions

Article 23
Transitional Provisions

1. In applying paragraph 3 of Article 6, in the case of persons who were sent to the territory of a Party prior to the date of entry into force of this Agreement, the period of employment referred to in that paragraph shall be considered to begin on that date.

2. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.

Article 24
Entry into Force and Termination

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

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party received from the other a note through the diplomatic channel indicating the intention of the other Party to terminate this Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to the benefit entitlements of all persons who:
   (a) at the date of termination, are in receipt of benefits; or
   (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits by virtue of this Agreement.
Note 3

IN WITNESS WHEREOF, the undersigned, being duly authorized thereto, have signed the present Agreement.

DONE in duplicate at Canberra this twenty seventh day of September 2001

FOR THE GOVERNMENT OF
AUSTRALIA:

AMANDA VANSTONE
[Signatures omitted]

FOR THE GOVERNMENT OF THE
UNITED STATES OF AMERICA:

J. THOMAS SCHIEFFER

[Signatures omitted]
ADMINISTRATIVE ARRANGEMENT
FOR THE IMPLEMENTATION OF THE AGREEMENT
BETWEEN
THE GOVERNMENT OF AUSTRALIA AND
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
ON SOCIAL SECURITY

The Competent Authority of Australia and

the Competent Authority of the United States of America,

In conformity with Article 12, paragraph (a), of the Agreement between
Australia and the United States of America on Social Security of this date,
hereinafter referred to as the “Agreement”, have agreed as follows:

CHAPTER I
General Provisions

Article 1
The terms used in this Administrative Arrangement shall have the same
meaning as in the Agreement.

Article 2
1. The liaison agencies referred to in Article 12, paragraph (a), of the
Agreement shall be:
   (a) for the United States, the Social Security Administration,
   (b) for Australia, Centrelink, except in relation to the application of
       Part II of the Agreement (including the application of other
       Parts of the Agreement as they affect the application of that
       Part) where it means the Australian Taxation Office.
2. The liaison agencies designated in paragraph 1 shall agree upon the
   joint procedures and forms necessary for the implementation of the
   Agreement and this Administrative Arrangement.
CHAPTER II
Provisions on Coverage

Article 3
1. Where the laws of a Party are applicable in accordance with any of the provisions of Article 6 of the Agreement, the Agency of that Party, upon request of the employer or self-employed person, shall, in circumstances agreed upon by the Parties, issue a certificate stating that the employee, or the employer with respect to that employee, or self-employed person is subject to those laws and indicating the duration for which the certificate shall be valid. This certificate shall be proof that the named worker and the employer in respect of the named worker are exempt from the laws on compulsory coverage of the other Party.

2. The certificate referred to in paragraph 1 shall be issued:
   (a) in the United States, by the Social Security Administration; and
   (b) in Australia, by the Commissioner of Taxation or an authorised representative of the Commissioner.

3. The Agency of a Party which issues a certificate referred to in paragraph 1 shall furnish a copy of the certificate or agreed details of the certificate to the liaison agency of the other Party as needed by the latter Agency.

CHAPTER III
Provisions on Benefits

Article 4
1. Applications for benefits under the Agreement shall be submitted on forms to be agreed upon by the liaison agencies of the two Parties.

2. The Agency of the Party with which an application for benefits is first filed in accordance with Article 16 of the Agreement shall provide the liaison agency of the other Party with such evidence and other information as may be required to complete action on the claim.

3. The Agency of a Party which receives an application that was first filed with an Agency of the other Party shall without delay provide the liaison agency of that Party with such evidence and other available information as may be required for it to complete action on the claim.

4. The Agency of the Party with which an application for benefits has been filed shall verify the information pertaining to the applicant and
Note 3

the applicant’s family members. The types of information to be verified shall be agreed upon by the liaison agencies of both Parties.

CHAPTER IV
Miscellaneous Provisions

Article 5

In accordance with measures to be agreed upon pursuant to Article 2, paragraph 2, of this Administrative Arrangement, the Agency of one Party shall, upon request of the Agency of the other Party, furnish available information relating to the claim of any specified individual for the purpose of administering the Agreement.

Article 6

The liaison agencies of the two Parties shall exchange statistics on the number of certificates issued under Article 3 of this Administrative Arrangement and on the payments made to beneficiaries under the Agreement. These statistics shall be furnished annually in a form to be agreed upon.

Article 7

1. Where administrative assistance is requested under Article 13 of the Agreement, expenses other than regular personnel and operating costs of the Agency providing the assistance shall be reimbursed, except as may be agreed to by the Competent Authorities or liaison agencies of the Parties.

2. Upon request, the liaison agency of either Party shall furnish without cost to the liaison agency of the other Party any medical information and documentation in its possession relevant to the disability of the claimant or beneficiary.

3. Where the Agency of a Party requires that a person in the territory of the other Party who is receiving or applying for benefits under the Agreement submit to a medical examination, such examination, if requested by that Agency, shall be arranged by the liaison agency of the other Party in accordance with the rules of the Agency making the arrangements and at the expense of the Agency which requests the examination.

4. The liaison agency of one Party shall reimburse amounts owed under paragraph 1 or 3 of this Article upon presentation of a statement of expenses by the liaison agency of the other Party.
Article 8

This Administrative Arrangement shall enter into force on the date of entry into force of the Agreement and shall have the same period of validity.

DONE in duplicate at Canberra this twenty seventh day of September 2001.

For the Competent Authority of Australia: For the Competent Authority of the United States of America:

AMANDA VANSTONE J. THOMAS SCHIEFFER
[Signatures omitted]

Schedule 2

[1] Schedule 3

insert

Schedule 14—Germany

Note: See section 5.

AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA AND THE FEDERAL REPUBLIC OF GERMANY

AUSTRALIA AND THE FEDERAL REPUBLIC OF GERMANY (the “Contracting Parties”)

DESIRING to strengthen the existing friendly relations between the two States and resolved to regulate their relations in the field of social security:

HAVE AGREED as follows:

PART I
GENERAL PROVISIONS

Article 1
Definitions

1. For the purposes of this Agreement,
(a) “national” means,
as regards the Federal Republic of Germany, a German citizen within the meaning of the Basic Law (Grundgesetz) for the Federal Republic of Germany; and
as regards Australia, a citizen of Australia;

(b) “legislation” means,
as regards the Federal Republic of Germany, the laws, regulations and other general legislative acts related to the branches of social security specified in paragraph 1(a) of Article 2; and
as regards Australia, the laws specified in subparagraph 1(b) of Article 2;

(c) “competent authority” means,
as regards the Federal Republic of Germany, the Federal Ministry of Labour and Social Affairs (Bundesministerium für Arbeit und Sozialordnung); and
as regards Australia, the Secretary to the Commonwealth Department responsible for the laws specified in subparagraph 1(b) of Article 2;

(d) “institution” means,
as regards the Federal Republic of Germany, the institution or authority responsible for the application of the legislation specified in paragraph 1(a) of Article 2; and
as regards Australia, the institution or agency responsible for the administration of the laws specified in subparagraph 1(b) of Article 2;

(e) “German period of coverage” means a period of contributions or any other period insofar as it is, under the German legislation, equivalent to a period of contributions for the purposes of benefit entitlement;

(f) “period of Australian working life residence” means a period defined as such in the Australian legislation;

(g) “benefit” means, in relation to a Contracting Party, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that pension, benefit or allowance;

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

(i) “carer payment” means, in relation to Australia a carer payment payable to the partner of a person who is in receipt of an Australian disability support pension or age pension.

2. Any term not defined in paragraph 1 has the meaning assigned to it in the applicable legislation.

Article 2
Legislative scope

1. Unless otherwise provided in this Agreement, it shall apply:

(a) as regards the Federal Republic of Germany, to the legislation concerning:

(i) Wage Earners’ Pension Insurance (Rentenversicherung der Arbeiter),

(ii) Salaried Employees’ Pension Insurance (Rentenversicherung der Angestellten),

(iii) Miners’ Pension Insurance (Knappschaftliche Rentenversicherung),

(iv) Steelworkers’ Supplementary Insurance (Hüttenknappschaftliche Zusatzversicherung),

(v) Farmers’ Old Age Security (Alterssicherung der Landwirte); and

(b) as regards Australia, to the Acts forming the social security law insofar as the law provides for, applies to or affects the following benefits:

(i) age pension,

(ii) disability support pension,

(iii) carer payment,

(iv) pensions payable to widowed persons, and

(v) double orphan pension.

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

(a) persons receiving age pension; or

(b) persons receiving disability support pension for the severely disabled.
Note 3

3. This Agreement shall also apply to laws, regulations and other general legislative acts in so far as they amend, supplement or replace the legislation of the Contracting Parties.

4. Notwithstanding the provisions of paragraph 1, the legislation of the Contracting Parties shall not include any laws made at any time for the purpose of giving effect to any other agreement on social security or any supra-national law.

5. Australian carer payment and double orphan pension are included in this Agreement to reciprocate those proportions of German benefit included to support a spouse and other dependants.

Article 3
Personal scope

Unless otherwise provided in this Agreement, it shall apply:

(a) in the operation of the German legislation, to

(i) nationals of either Contracting Party;


(iii) stateless persons, within the meaning of Article 1 of the Convention Relating to the Status of Stateless Persons of September 28, 1954;

(iv) other persons to the extent that they derive rights from a national of either Contracting Party, from a refugee or from a stateless person within the meaning of this Article;

(v) nationals of a state other than a Contracting Party, unless they are included in the group of persons specified in subparagraph (iv); and

(b) in the operation of the Australian legislation, to any person who is or has been an Australian resident and, where applicable, to other persons in regard to the rights they derive from the persons described above.

Article 4
Equality of treatment

1. Unless otherwise provided in this Agreement:
(a) in the application of the German legislation, persons specified in subparagraphs (a)(i), (ii), (iii) and (iv) of Article 3 who ordinarily reside in the territory of either Contracting Party shall be treated equally to German nationals; and
(b) in the application of the Australian legislation, persons specified in paragraph (b) of Article 3 shall be treated equally.

2. Unless otherwise provided in this Agreement, benefits under the German legislation shall be awarded to nationals of Australia, who ordinarily reside outside the territories of both Contracting Parties, under the same conditions as they are awarded to German nationals who ordinarily reside outside the territories of the Contracting Parties.

Article 5
Equivalence of territories

1. Unless otherwise provided in this Agreement, the German legislation which requires that the acquisition of an entitlement to benefits or the payment of benefits be dependent on ordinarily being resident in the Federal Republic of Germany shall not be applicable to the persons specified in subparagraphs (a)(i), (ii), (iii) and (iv) of Article 3 who ordinarily reside in Australia.

2. Subject to paragraph 3, where a person would be qualified for a benefit under the Australian legislation or under this Agreement except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged, but:

(a) is an Australian resident or ordinarily residing in the territory of the Federal Republic of Germany or of a third country with which Australia has implemented an agreement on social security that includes provision for co-operation in the lodgement and determination of claims for benefits; and

(b) is in Australia, the territory of the Federal Republic of Germany or the territory of that third country,

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

3. The requirement for a person to have been an Australian resident at some time shall not apply to a person who claims a double orphan pension under this Agreement.
PART II
PROVISIONS CONCERNING BENEFITS

Article 6
Totalisation and calculation – German benefits

The following shall apply as regards the German institution:

(a) When German periods of coverage have been completed, periods of Australian working life residence shall also be taken into account for purposes of determining eligibility for benefits under German legislation, provided that these periods do not coincide with the above mentioned periods of coverage.

(b) The periods of Australian working life residence to be taken into account under subparagraph (a) shall be assigned to that branch of insurance whose institution is responsible for determining entitlement to a pension as if only the German legislation is applied. If, according to the foregoing, the Miners’ Pension Insurance is the competent institution, periods of Australian working life residence shall be taken into account for the Miners’ Pension Insurance only if the relevant person was employed in a mining enterprise in underground operations during this time.

(c) For purposes of determining eligibility for a benefit payable under the German legislation:

(i) a month which is recognised as a month in a period of Australian working life residence shall be considered as a month of contributions under the German legislation; and

(ii) a year which is recognised as a year in a period of Australian working life residence shall be considered as twelve months of contributions under the German legislation.

(d) Earnings points shall be determined solely on the basis of pension rating periods to be taken into account under the German legislation in the calculation of German benefits.
Article 7
Totalisation – Australian benefits

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:
   (a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the Australian legislation for a benefit;
   (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4 for that person; and
   (c) a German period of coverage,
then for the purposes of a claim for that Australian benefit, that German period of coverage shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the Australian legislation, to be a period in which that person was an Australian resident.

2. For the purposes of paragraph 1, where a person:
   (a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the Australian legislation for qualification of that person for a benefit; and
   (b) has accumulated a German period of coverage in two or more separate periods that equals or exceeds in total the period referred to in subparagraph (a),
the total of the German periods of coverage shall be deemed to be one continuous period.

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

4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:
   (a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least six months must be continuous; and
   (b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum period shall be required.
Note 3

5. For the purposes of a claim by a person for a pension payable to a widowed person, that person shall be deemed to have accumulated a German period of coverage for which his or her partner accumulated a German period of coverage but any period during which the person and his or her partner both accumulated German periods of coverage shall be taken into account once only.

Article 8
Calculation – Australian benefits

1. Subject to paragraph 2, where a person who is outside Australia is qualified for an Australian benefit by virtue of this Agreement, other than double orphan pension, the rate of benefit shall be determined according to the Australian legislation.

2. Subject to paragraph 3, where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who is outside Australia, the rate of that benefit shall be determined according to Australian legislation but, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, only a proportion of the German benefit shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months (not exceeding 300) of Australian working life residence used in the assessment of that person’s Australian benefit by the amount of German benefit and dividing that product by 300.

3. Only a person receiving a proportionalised Australian benefit shall be entitled to receive the concessional assessment of income described in paragraph 2.

4. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who ordinarily resides in the Federal Republic of Germany, Australia shall disregard, when assessing the income of that person, any German social assistance and payments of a similar character provided in case of need insofar as they are proposed by the liaison agencies specified in Article 16 and jointly approved by the competent authorities and listed in the Administrative Arrangement (Verwaltungsvereinbarung).

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

6. Subject to the provisions of paragraph 7, where an Australian benefit is payable only by virtue of the Agreement to a person who is in Australia, the rate of that benefit shall be determined by:
Note 3

(a) calculating that person’s income according to the Australian legislation but disregarding in that calculation any German benefit to which the person is entitled;
(b) deducting that German benefit from the maximum rate of that Australian benefit; and
(c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the Australian legislation, using as the person’s income the amount calculated under subparagraph (a).

7. The provisions in paragraph 6 shall continue to apply for 26 weeks where a person departs temporarily from Australia.

8. Where a member of a couple is, or both that member and his or her partner are, entitled to a German benefit or benefits and/or any payment referred to in this Article, each of them shall be deemed, for the purposes of this Article and of the Australian legislation, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

Article 9
Payment of Australian benefits overseas

1. Australian benefits are also payable into the territory of the Federal Republic of Germany.

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

3. Where qualification for an Australian benefit is subject to limitations as to time, then references to Australia in those limitations shall be read also as references to the territory of the Federal Republic of Germany.

4. Any provisions of Australian legislation which prohibit the payment of an Australian benefit to a former Australian resident who:
   (a) returns to Australia to again become an Australian resident;
   (b) claims an Australian benefit; and
   (c) departs Australia within a period specified in that legislation, shall not apply to a person who receives that benefit by virtue of the Agreement.

5. Where a double orphan pension would be payable to a person under the social security laws of Australia, in respect of a young person whose
sole surviving parent died while that young person was an Australian resident, if that person and that young person were residents of Australia, that pension shall, subject to the provisions of those laws, be payable while that person and that young person are residents of the Federal Republic of Germany.

PART III
MISCELLANEOUS PROVISIONS

CHAPTER 1
ADMINISTRATIVE ASSISTANCE

Article 10
Mutual assistance

1. The institutions, associations of institutions, authorities and competent authorities of the Contracting Parties shall provide assistance to each other in the application of the legislation specified in paragraph 1 of Article 2 and in the implementation of this Agreement, in the same manner in which they apply their own legislation.

2. The institution of one Contracting Party, when requested by the institution of the other Contracting Party, shall, to the extent permitted by its legislation, provide to that institution free of charge any medical data and documents in its possession relating to the general disability of an applicant or beneficiary.

3. If an institution of one Contracting Party requires an applicant or beneficiary who lives in the territory of the other Contracting Party to undergo a medical examination, such examination shall, at the request of that institution, be arranged or carried out by the institution of the latter Contracting Party. The medical examination will be done at the expense of the requesting institution.

4. The agencies referred to in paragraph 1 shall, within their respective areas of jurisdiction and to the extent possible, communicate to each other such information and transmit such documentation as may be required to maintain the rights and obligations of the persons concerned under the legislation specified in paragraph 1 of Article 2 and under this Agreement. Such information or documentation regarding a person shall also be transmitted to that person at his or her request.

5. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the competent authorities for the reimbursement of certain types of expenses.
Note 3

Article 11
Fees

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

2. Documents which, in the application of the legislation specified in paragraph 1 of Article 2 and in the implementation of this Agreement, must be submitted to an authority or institution of one Contracting Party, may be submitted to an authority or institution of the other Contracting Party without consular authentication or any other similar formality.

Article 12
Languages of communication

In the application of the legislation specified in paragraph 1 of Article 2 and in the implementation of this Agreement, the agencies referred to in paragraph 1 of Article 10 may communicate in their respective official languages directly with each other as well as with persons concerned and with their representatives.

Article 13
Lodgement of documents

1. If a claim for a benefit under the legislation of one Contracting Party has been submitted to an agency of the Contracting Party which, under the legislation of the latter Contracting Party, is competent to receive a claim for a corresponding benefit, that claim shall be deemed to have been submitted to the competent institution of the first Contracting Party on the same date as the claim was lodged with the agency in the other Contracting Party. This provision shall apply, as appropriate, to other claims, notices and appeals.

2. Where a claim, notice or appeal is received by an agency of one Contracting Party, that agency shall ensure it is forwarded without delay to the appropriate liaison agency of the other Contracting Party.

3. In relation to Australia, an appeal means an appeal submitted to a body established under the social security laws of Australia.

4. Subject to paragraph 5, a claim by a person for a benefit from a Contracting Party, whether lodged in the territory of that Contracting
Note 3

Party or of the other Contracting Party, shall be deemed to be a claim for a corresponding benefit from that other Contracting Party if the information disclosed by the person in the original claim indicates that the person may be qualified for corresponding benefit. The foregoing shall not apply if the person is under the normal age pension age of the other Contracting Party and the person explicitly requests that the determination of entitlement to old age benefits acquired under the legislation of the other Contracting Party be deferred.

5. Paragraph 4 shall not apply if the original claim or a copy is not received by the appropriate liaison agency of the other Contracting Party within six months of the lodgement of the original claim.

Article 14
Recovery of overpayments

1. Where a German institution has made an overpayment of a benefit to a person for any period and the Australian institution is to pay arrears of an Australian benefit for the same period, the Australian institution shall, at the request of that German institution, deduct from those arrears the amount of the overpayment by the German institution and shall transfer the amount so deducted to the German institution.

2. Where:
   (a) a benefit is paid or payable under German legislation to a person in respect of a past period;
   (b) for all or part of that period, Australia has paid to that person a benefit under its social security law; and
   (c) the amount of the benefit paid by Australia would have been reduced had the benefit paid or payable under German legislation been paid during that period;

then
   (d) the amount that would not have been paid by Australia had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period shall be a debt due by that person and may be recovered by Australia; and
   (e) Australia may determine that the amount or only part of that debt may be deducted from future payments of a benefit payable by Australia to that person.

3. Where a German institution has not yet paid the benefit described in subparagraph 2(a) to the person:
Note 3

(a) the German institution shall, at the request of the institution of Australia pay the amount of the benefit necessary to meet the debt described in subparagraph 2(d) to the Australian institution and shall pay any excess to the person; and
(b) any shortfall may be recovered by the competent authority of Australia under subparagraph 2(e).

4. In paragraph 2, “benefit” means, in relation to Australia, a pension, benefit or allowance that is payable under the social security law of Australia.

Article 15
Data protection

1. In providing assistance under Article 10, a Contracting Party shall supply to the other Contracting Party data about a person, particularly about any payments it makes to that person, only where that person:
(a) wishes to make use of any provision of the Agreement; or
(b) claims a benefit from the first Contracting Party after the Agreement enters into force; or
(c) is receiving a benefit from the second Contracting Party before the Agreement enters into force and authorises the first Contracting Party to provide the data to the second Contracting Party.

2. Notwithstanding any laws or administrative practices of a Contracting Party, no personal data concerning a person which is received by that Contracting Party from the other Contracting Party shall be transferred or disclosed to any other country or to any organisation within that other country without the prior written consent of that other Contracting Party.

3. The Contracting Parties agree that there is no obligation on any institution to disclose personal data except under paragraph 1.

4. The processing and use of any personal data or any business or industrial secret made in accordance with this Agreement or with any arrangement for the implementation of the Agreement shall be governed by the respective national laws concerning the protection of data. The said data shall be transmitted to the bodies specified in Article 16 only. The recipient of the data shall be obliged to protect the data effectively against unauthorised access, modification and disclosure.
Note 3

5. Data transmitted in accordance with this Article shall not be disclosed by the recipient without authorisation and shall be processed or used only for the purposes of implementing this Agreement or the legislation to which it applies. The passing on of this data by the recipient for other purposes is permissible in the framework of the law of the Contracting Party receiving the data provided this serves social security purposes including related judicial proceedings. However, the foregoing shall not prevent the Contracting Party receiving the data from passing it on in cases that are mandatory under the laws and regulations of that Party for the interests protected by criminal law or for the purposes of taxation. In all other cases the passing on to bodies other than those specified in Article 16 shall only be permissible upon prior consent of the transmitting bodies.

6. The transmitting body shall ensure that transmitted data is correct and reasonably necessary for the purpose for which the transmission is intended. Should the transmitting body find that data has been transmitted otherwise than in accordance with this paragraph the transmitting body shall notify the recipient immediately. The recipient shall be obliged to correct or delete the data. It shall, at the request of the transmitting body, notify that body of the purposes for which the transmitted data has been used and the results obtained from that usage.

7. The recipient of the data shall, upon the request of a person, provide to that person details of the data transmitted in relation to that person and the uses for which that data is intended to be put. In all other cases, the right of the person concerned to receive details of the data held in relation to that person shall be determined by the national law of the Contracting Party whose body requested the information.

8. A recipient of data transmitted under this Agreement shall delete that data when it ceases to be necessary for the application of this Agreement or the legislation to which the Agreement applies.

9. Should the transmission of incorrect data result in a person receiving a lesser amount of benefit, the agency responsible for paying the benefit shall adjust the amount of the benefit and pay any retrospective amounts owing to the person when the correct data is received.
CHAPTER 2
IMPLEMENTATION AND INTERPRETATION OF THE AGREEMENT

Article 16
Implementation arrangements and liaison agencies

1. The Governments of the Contracting Parties or the competent authorities may conclude arrangements for the implementation of this Agreement. The competent authorities shall keep each other informed about any amendments or additions to their legislation.

2. The following are designated as liaison agencies for the implementation of this Agreement:

   (a) in the Federal Republic of Germany,
       for the Wage Earners’ Pension Insurance,
       the Landesversicherungsanstalt Oldenburg-Bremen, Oldenburg
       for the Salaried Employees’ Pension Insurance,
       the Bundesversicherungsanstalt fur Angestellte, Berlin
       for the Miners’ Pension Insurance,
       the Bundesknappschaft, Bochum
       for the Steelworkers’ Supplementary Insurance,
       the Landesversicherungsanstalt fur das Saarland, Saarbrucken

   (b) in Australia,
       the institution responsible for the administration of the laws specified in subparagraph 1(b) of Article 2.

3. Where German legislation does not already make provision to this effect, the liaison agency designated for the Wage Earners’ Pension Insurance system shall be responsible, within the scope of that system, for all procedures including the determination and award of benefits, provided that:

   (a) there are German periods of coverage and periods of Australian working life residence;
   (b) the person entitled to a benefit ordinarily resides in Australia; or
   (c) the person entitled to a benefit is an Australian national who ordinarily resides outside the territories of both Contracting Parties.

   This paragraph shall not apply to the provision of medical, occupational, and supplementary rehabilitation benefits.

4. The jurisdiction of the Railways Insurance Institution and the Seamen’s Insurance Institution shall remain unaffected.
Note 3

5. The liaison agencies listed in paragraph 2 and the institutions mentioned in paragraph 4 shall, within their respective areas of jurisdiction, be responsible for generally informing the persons concerned about their rights and obligations under this Agreement.

6. The liaison agencies listed in paragraph 2 and the institutions mentioned in paragraph 4, with the participation of the competent authorities, shall conclude an Administrative Arrangement (Verwaltungsvereinbarung) setting out the administrative measures required and expedient for implementing this Agreement.

7. As far as possible, the liaison agencies listed in paragraph 2 and the institution mentioned in paragraph 4 shall compile statistics on the payments made under the Agreement for each calendar year. Where possible, these statistics will show the number and total amount of pensions and lump-sum settlements by type of pension. These statistics shall be exchanged.

8. Cash benefits payable to recipients in the territory of the other Contracting Party shall be paid without recourse to a liaison agency in that Contracting Party.

Article 17
Currency and exchange rate

1. To provide for the effective payment of benefits an institution of a Contracting Party may, at its discretion, pay a benefit to a person in the territory of the other Contracting Party in the currency of:
   (a) the first Contracting Party;
   (b) the other Contracting Party; or
   (c) a third country.

2. If benefits of a German institution are paid in the currency of the other Contracting Party or of a third country, the conversion rate shall be the rate of exchange in effect on the day when the remittance is made.

Article 18
Resolution of disputes

1. Disagreements between the two Contracting Parties regarding the interpretation or application of this Agreement shall, as far as possible, be settled by the competent authorities.

2. Unless otherwise agreed, if a disagreement cannot thus be resolved it shall, at the request of either Contracting Party, be submitted to an arbitration tribunal whose composition shall be agreed upon by the
Contracting Parties in each instance. The arbitration tribunal shall establish its own rules of procedure, including the allocation of costs. The decisions of the arbitration tribunal shall be binding.

PART IV
TRANSITIONAL AND FINAL PROVISIONS

Article 19
Consideration of entitlements under the Agreement

1. This Agreement shall not establish any entitlement to benefits for any period prior to its entry into force.

2. Unless otherwise provided in the Agreement, when the Agreement is being implemented and when rights under it (including deciding eligibility for benefits under the Agreement) are being determined, all valid and relevant events including periods of coverage and periods as an Australian resident, no matter when they occurred, shall be taken into consideration.

3. The legal force of former decisions shall not preclude the application of this Agreement.

4. If a benefit has been determined under German legislation with binding force before the entry into force of this Agreement, a review and recalculation under this Agreement of this benefit shall only be carried out if the beneficiary explicitly so requests.

Article 20
Concluding Protocol

The attached concluding protocol shall form an integral part of this Agreement.

Article 21
Entry into force

1. This Agreement shall be subject to ratification; the instruments of ratification shall be exchanged in Berlin as soon as possible.

2. This Agreement shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.
Note 3

Article 22
Period of the Agreement

1. This Agreement shall be concluded for an indefinite period of time. Either Contracting Party may denounce this Agreement in writing through diplomatic channels at the end of a calendar year by giving three months’ notice. This period of notice shall be calculated from the day on which the notice is received by the other Contracting Party.

2. In the event of termination by denunciation, the provisions of this Agreement shall continue to apply in respect of claims to benefits acquired not later than the effective date of that termination; restrictive legislation regarding the exclusion of an entitlement or the suspension or withdrawal of benefits on the grounds of temporary or ordinary residence in another state shall not be applicable to such claims.

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

DONE at Canberra on this thirteenth day of December 2000 in two copies in the English and German languages, each text being equally authentic.

FOR AUSTRALIA: FOR THE FEDERAL REPUBLIC OF GERMANY:

JOCELYN NEWMAN Dr HORST BÄCHMANN and
WALTER RIESTER

[Signatures omitted]
CONCLUDING PROTOCOL TO THE AGREEMENT BETWEEN AUSTRALIA AND THE FEDERAL REPUBLIC OF GERMANY ON SOCIAL SECURITY

At the time of signing the Agreement on Social Security concluded this day between Australia and the Federal Republic of Germany, the plenipotentiaries of both Contracting Parties stated that they are in agreement on the following points:

1. With reference to Article 2 of the Agreement:
   (a) Part II of the Agreement shall not apply to the Steelworkers’ Supplementary Insurance and to the Farmers’ Old Age Security of the Federal Republic of Germany;
   (b) subject to paragraph (c), where under the German legislation both the conditions for the application of the Agreement and the conditions for the application of any other convention or supranational arrangement are satisfied, the German institution shall disregard that other convention or supranational arrangement when applying the Agreement; and
   (c) paragraph 4 of Article 2 and the preceding subparagraph shall not apply if the social security legislation, which arises for the Federal Republic of Germany from international treaties or supranational laws or is designed to implement them, contains provisions relating to the apportionment of insurance burdens.

2. With reference to Article 4 of the Agreement:
   (a) provisions relating to the apportionment of insurance burdens that may be contained in international treaties between the Federal Republic of Germany and other States shall not be affected;
   (b) the German legislation guaranteeing the participation of insured people and employers in the self government bodies of the institutions and their associations and in the adjudication of social security matters shall remain unaffected; and
   (c) Australian nationals who ordinarily reside outside the territory of the Federal Republic of Germany shall be entitled to voluntary coverage under the legislation specified under subparagraphs 1(a)(i), (ii) and (iii) of Article 2 if they have periods of contributions under that legislation for at least sixty calendar months. This shall also apply to persons specified in
3. With reference to Article 5 of the Agreement:

(a) With respect to contingencies under German Industrial Accident Insurance which occurred prior to 1 January 1997 the following shall apply:

Article 5 shall apply, as appropriate, to cash benefits payable under German Industrial Accident Insurance to beneficiaries who are Australian nationals and who ordinarily reside in Australia, provided that the applicable law of Australia or of a federal state or territory regarding statutory accident insurance provides for payment of corresponding cash benefits to German nationals who ordinarily reside in the territory of the Federal Republic of Germany. This shall apply, as appropriate, with regard to the persons specified in subparagraphs (a)(ii), (iii) and (iv) of Article 3 who ordinarily reside in Australia, provided that the applicable law of Australia or of a federal state or territory regarding statutory accident insurance provides for the payment of corresponding cash benefits to the persons specified in subparagraphs (a)(ii), (iii) and (iv) of Article 3, who ordinarily reside in the territory of the Federal Republic of Germany;

(b) the German legislation regarding cash benefits based on period of coverage completed under laws other than (German) federal law shall not be affected;

(c) the German legislation regarding cash benefits in respect of occupational accidents (including occupational diseases) for which the injured party was not insured under (German) federal law at the time the accident occurred shall not be affected;

(d) the German legislation regarding medical, occupational and supplementary rehabilitation benefits provided by a pension insurance institution shall not be affected. Australian legislation which provides for, applies to or affects disability support pension for a person who is not severely disabled shall not be affected;

(e) with regard to a pension under the German legislation governing reduced earning capacity, Article 5 of the Agreement shall apply to persons who ordinarily reside in Australia only if
entitlement exists when the labour market situation is disregarded; and

(f) the German legislation providing for the suspension of claims under German pension insurance for persons who go abroad to evade criminal proceedings against them shall not be affected.

4. With reference to Article 6 of the Agreement:

(a) Article 6 shall apply, as appropriate, to benefits which are granted at the discretion of an institution under the German legislation;

(b) residence periods in Australia during which an employment or self employment was exercised shall be equivalent to the periods of compulsory contributions required under the German legislation for a claim to a pension;

(c) where the German legislation provides that the entitlement to benefits requires the completion of certain periods of coverage within a specified period and where the legislation also provides that this period is extended by certain circumstances or periods of coverage, periods of coverage under the legislation of the other Contracting Party or comparable circumstances within the territory of the other Contracting Party shall be taken into account for such an extension. Comparable circumstances are periods during which disability or age pensions or benefits on account of sickness, unemployment or industrial accidents (with the exception of pensions) were paid under the Australian legislation as well as periods of child raising in Australia; and

(d) mining enterprises within the meaning of subparagraph (b) of Article 6 are enterprises which mine minerals or similar substances and those which quarry stone and earth predominantly in underground operations.

5. With reference to Article 9 of the Agreement:

Australian disability support pension under the Agreement shall not be payable for more than 26 weeks to a person who is not severely disabled while that person is outside Australia.

6. With reference to Article 15 of the Agreement:

A person who:

(i) is in receipt of a pension on account of reduced earning capacity from the Federal Republic of Germany at the time the Agreement enters into force;
Notes to the *Social Security (International Agreements) Act 1999*

**Note 3**

(ii) ceases to be entitled to that pension because of age; and

(iii) immediately qualifies for an age pension from the Federal Republic of Germany,

shall be deemed not to have claimed that age pension for the purposes of subparagraph 1(b) of Article 15.

7. With reference to Article 16 of the Agreement:

German court decisions and German institutions’ notifications may be communicated direct to persons residing in Australia and may be sent by registered mail with acknowledgement of receipt. The first sentence shall also apply to decisions, notifications, and other documents which must be served, issued in connection with the implementation of the German law governing war victims’ assistance and those laws which declare the first mentioned law to be applied accordingly.

8. In the implementation of the Agreement, the German legislation, to the extent that it contains more favourable provisions for persons who have suffered because of their political attitude or for reasons of their race, religion or ideology shall not be affected.

DONE at Canberra on this thirteenth day of December 2000 in two copies in the English and German languages, each text being equally authentic.

FOR AUSTRALIA: FOR THE FEDERAL REPUBLIC OF GERMANY:

JOCELYN NEWMAN Dr HORST BÄCHMANN and WALTER RIESTER

[Signatures omitted]

As at 1 July 2002 the amendments are not incorporated in this compilation.