Social Security (International Agreements) Act 1999

Act No. 173 of 1999 as amended

VOLUME 1 includes: Sections 1-25
Schedules 1-12

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

VOLUME 2 includes: Table of Acts
Actnotes
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Endnotes

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

Part 1—Preliminary

1 Short title [see Note 1]

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

2 Commencement

This Act commences on 20 March 2000.

3 Interpretation

(1) Unless a contrary intention appears, an expression that is used in the Social Security Act 1991 has the same meaning, when used in this Act, as in the Social Security Act 1991.

(2) A reference in this Act (other than the reference in section 4) to the social security law is a reference to this Act, the Social Security Act 1991 and any other Act that is expressed to form part of the social security law.

(3) A reference in this Act to a provision of the social security law is a reference to a provision of this Act, the Social Security Act 1991 or any other Act that is expressed to form part of the social security law.

4 Social security law

This Act forms part of the social security law.
Part 2—International social security agreements

5 Scheduled international social security agreements

(1) For the purposes of a provision of the social security law, an agreement is a scheduled international social security agreement if:
   (a) the agreement is between Australia and another country; and
   (b) the agreement relates to reciprocity in social security or superannuation matters; and
   (c) the text of the agreement is set out in a Schedule to this Act.

(2) The reference in subsection (1) to a scheduled international social security agreement includes a reference to such an agreement as amended, or otherwise affected in its operation, by a further agreement or further agreements between Australia and the other country concerned.

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

(1) The provisions of a scheduled international social security agreement have effect despite anything in the social security law.

(2) Subsection (1) applies to a provision of an agreement only in so far as the provision is in force and affects the operation of the social security law.

(3) If:
   (a) immediately before he or she reaches pension age, a person is receiving a social security payment (other than age pension) solely because of the operation of a scheduled international social security agreement; and
   (b) on reaching pension age, the person becomes qualified for age pension because of the operation of paragraph 43(1)(c) of the Social Security Act 1991;

the age pension is taken to be payable to the person under the agreement referred to in paragraph (a).
7 Amendment of Schedules by regulations

(1) The regulations may make provision amending a Schedule to this Act so as to set out in the Schedule the text of an agreement (the *amending agreement*) that amends, or otherwise affects the operation of, another agreement set out in the Schedule.

(2) Regulations making provision by virtue of subsection (1) must not come into operation on a day earlier than the day on which the amending agreement comes into force for Australia.

8 Addition of new scheduled international social security agreements

(1) The regulations may add to this Act a Schedule setting out the terms of an agreement between Australia and another country if the agreement relates to reciprocity in social security or superannuation matters.

(2) Regulations made by virtue of subsection (1) must not come into operation on a day earlier than the day on which the agreement concerned comes into operation for Australia.

9 Repeal of Schedule

The regulations may repeal a Schedule to this Act.

10 Parenting payment claimed under agreement

(1) If:

(a) a scheduled international social security agreement authorises a person who is outside Australia to lodge a claim for parenting payment; and

(b) the person, while outside Australia, lodges a claim for parenting payment; and

(c) the person is not a member of a couple; and

(d) the person would qualify for parenting payment but for the operation of:

(i) paragraph 500(1)(b) or (c) of the *Social Security Act 1991*; or
Part 2 International social security agreements

Section 11

(ii) subparagraph 500(1)(d)(ii) of that Act to the extent that it requires a person to have been in Australia for the period specified in the subparagraph; or

(iii) section 500F, 500G or 500H of that Act;

then:

(e) the provisions referred to in paragraph (d) do not apply to the person; and

(f) if parenting payment is payable to the person, it is taken to be payable to the person under the scheduled international social security agreement.

(2) If:

(a) a person who is in Australia lodges a claim for parenting payment; and

(b) the person is not a member of a couple; and

(c) the person would qualify for parenting payment under a scheduled international social security agreement but for the operation of subparagraph 500(1)(d)(ii) of the Social Security Act 1991 to the extent it requires a person to have been in Australia for the period specified in the subparagraph;

then:

(d) that requirement of subparagraph 500(1)(d)(ii) does not apply to the person; and

(e) if parenting payment is payable to the person, it is taken to be payable to the person under the scheduled international social security agreement.

11 Portability of international agreement pension or allowance

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

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

(1) If:

(a) a social security payment is payable to a person under a scheduled international social security agreement; and
Section 12A

(b) the person is outside Australia; and
(c) the agreement provides for the rate of the social security payment to be determined according to the law of Australia; the rate of the social security payment is the person’s international agreement portability rate worked out in accordance with Part 3.

(2) A reference in the agreement to a person’s period of residence in Australia is to be taken to be a reference to the period of the person’s Australian working life residence for the purposes of this Act.

12A Saving in respect of United Kingdom agreement

On and after 1 March 2001, the social security law has effect, in relation to a person who last became an Australian resident on or before 1 March 2000, as if the agreement the text of which is set out in Schedule 1 had not been terminated.
Part 3—Calculation of international agreement portability rates

Division 1—Overall rate calculation process

13 Overall calculation process

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

(2) If a person’s international agreement portability rate as calculated under subsection (1) would exceed the rate (the *notional rate*) that would be the person’s notional agreement pension rate under that subsection if the person had a residence factor of 1, the person’s international agreement portability rate is the rate that equals the notional rate.
14 Amounts to be treated as income

(1) If a scheduled international social security agreement provides that certain amounts are to be treated as income of a person—those amounts are to be treated as income of the person for the purposes of this Part.

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

14A Additional child amounts

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

<table>
<thead>
<tr>
<th>Item</th>
<th>Family situation</th>
<th>Additional child amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>For each dependent child under 13 years of age</td>
<td>$1,957.80</td>
</tr>
<tr>
<td>2</td>
<td>For each dependent child who has reached 13, but is under 15, years of age</td>
<td>$2,732.60</td>
</tr>
<tr>
<td>3</td>
<td>For a person without a partner</td>
<td>$962.00</td>
</tr>
</tbody>
</table>

(2) If, for the purposes of subsection (1), the Secretary determines in writing a higher amount in substitution for an amount set out in the table, the higher amount is taken, from the commencement of subsection (1), to be substituted for the amount so set out.

(3) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.
Division 2—Australian working life residence

15 Working life

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

16 Australian working life residence generally

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

17 Calculation of period of residence

(1) If a person’s period of Australian working life residence would, apart from this subsection, be a number of whole months, the period is to be increased by one month.

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

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

If:

(a) a person is receiving an age or disability support pension; and
(b) the person is a member of a couple; and
(c) the person’s partner is receiving an age or disability support pension; and
(d) the partner’s period of Australian working life residence is longer than the period that would be the person’s period of Australian working life residence under section 17; the person’s period of Australian working life residence is to be equal to the partner’s period of Australian working life residence.
19 Australian working life residence: member of former age or disability support pensioner couple

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

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

20 Australian working life residence: wife pensioner

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

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

If:
(a) a person is receiving a pension PP (single), bereavement allowance or widow B pension; and
(b) the person became qualified for the pension or allowance because the person’s former partner died; and
(c) the partner’s period of Australian working life residence (immediately before the partner’s death) is longer than the period that would now be the person’s period of Australian working life residence under section 17;
Part 3  Calculation of international agreement portability rates
Division 2  Australian working life residence

Section 22

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

22  Australian working life residence: carer payment

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

10  Social Security (International Agreements) Act 1999
Division 3—Residence factor

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

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

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

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

Person’s Australian working life residence

\[
\frac{300}{300}
\]
Section 25

**Part 4—Regulations**

**25 Regulations**

The Governor-General may make regulations prescribing matters:

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

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

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

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

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

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

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

Have agreed as follows:

PART I—GENERAL PROVISIONS

ARTICLE 1

Definitions

1. For the purpose of this Agreement, unless the context otherwise requires:
“benefit” means pension, allowance or benefit payable under the legislation of one (or the other) Party and includes any increase payable for a dependant;

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

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

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

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

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

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

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

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

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

“gainfully occupied” means employed or self-employed;

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

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

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

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

“qualified to receive” means, in relation to the United Kingdom, entitled to receive subject to any disqualification or any provision about claiming, hospital treatment or overlapping benefits which may be appropriate;

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

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

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

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

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

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

2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning ascribed to it in the legislation of the Parties or, in the event of a conflict of meaning, by whichever of the legislation of the Parties is the more applicable to the circumstances of that person.

3. Any reference in this Agreement to “Article” means an Article of this Agreement, and any reference to a “paragraph” is a reference to a paragraph of the Article in which the reference is made, unless it is stated to the contrary.

ARTICLE 2

Scope of legislation

1. The provisions of this Agreement shall apply:

(a) in relation to the territory of the United Kingdom, to:


16 Social Security (International Agreements) Act 1999
(ii) the Social Security Acts 1975 to 1989 (Acts of Parliament) as those Acts apply to the Isle of Man by virtue of Orders made, or having effect as if made, under the Social Security Act 1982 (an Act of Tynwald);

(iii) the Social Security (Jersey) Law, 1974;

(iv) the Social Insurance (Guernsey) Law, 1978;

(v) the Child Benefit Act 1975, the Child Benefit (Northern Ireland) Order 1975 and the Child Benefit Act 1975 (an Act of Parliament) as that Act applies to the Isle of Man by virtue of Orders made, or having effect as if made, under the Social Security Act 1982 (an Act of Tynwald); the Family Allowances (Jersey) Law, 1972 and the Family Allowances (Guernsey) Law, 1950;

and to the legislation which was repealed or consolidated by those Acts, Laws or Orders or repealed by legislation consolidated by them; and

(b) in relation to Australia, to the Social Security Act 1947.

2. Subject to the provisions of paragraphs (3) and (4) this Agreement shall apply also to any laws, orders and regulations which supersede, replace, amend, supplement or consolidate the legislation specified in paragraph (1).

3. This Agreement shall not affect any benefits payable under the legislation of either Party except in the manner set out in this Agreement.

4. This Agreement shall not apply to legislation on social security of the Institutions of the European Communities or to any convention or agreement on social security which either Party has concluded with a third party or to any laws, orders or regulations which amend the legislation specified in paragraph (1) for the purpose of giving effect to such a convention or agreement but shall not prevent either Party from taking into account under its legislation the provisions of any other convention or agreement which that Party has concluded with a third party.
5. Subject to the provisions of paragraph (2), this Agreement shall apply, unless the Parties agree otherwise, only to benefits described in the legislation specified in paragraph (1) at the date of coming into force of this Agreement and for which specific provision is made in this Agreement.
PART II—RETIREMENT PENSIONS, AGE PENSIONS AND
BENEFITS FOR WIDOWS

ARTICLE 3

Retirement pensions

1. For the purpose of determining entitlement to retirement pension under the legislation of any part of the territory of the United Kingdom, a person who is permanently resident in that part of the territory shall be treated as if he or she, or, in the case of a claim made by a married woman or a widow by virtue of her husband’s insurance, her husband, had paid contributions under the legislation of that part of the territory for any period during which that person or that person’s husband, as the case may be:

(a) was resident in Australia and had attained the age of sixteen years; and
(b) being a woman had not attained the age of sixty years, or sixty-five years in the case of Guernsey or Jersey, or being a man had not attained the age of sixty-five years.

2. Where:

(a) a woman claiming retirement pension by virtue of her own insurance had been, but is not at the time of the claim, married, and chooses to have her former husband’s contributions taken into account for the purpose of her claim; and
(b) her former husband had been resident in Australia for any period between the ages of sixteen years and sixty-five years;

her former husband shall be treated, for the purpose of her claim, as if he had paid contributions under the legislation of the territory of the United Kingdom for any period referred to in sub-paragraph (b).

3. Where a person who is permanently resident in any part of the territory of the United Kingdom was receiving an age pension, otherwise than by virtue of this Agreement or the former Agreement, at the time when he or she was last in Australia, and was over pensionable age at that time, he or she shall, if not qualified by virtue of the preceding paragraphs of this Article to receive retirement pension at the full standard rate under
the legislation of that part of the territory of the United Kingdom, be treated as if he or she satisfied the contribution conditions for such a pension.

4. Any pension which is awarded by virtue of this Article shall continue to be payable if the pensioner ceases to be permanently resident in one part of the territory of the United Kingdom and becomes permanently resident in another part of the territory of the United Kingdom, and the competent authority of the latter part of the territory of the United Kingdom shall not determine entitlement under this Article.

5. Any pension which is awarded by virtue of this Article shall cease to be payable if the pensioner ceases to be permanently resident in the territory of the United Kingdom.

6. Where a person is entitled to receive a benefit by virtue of the provisions of this Article, the rate of benefit which he or she would otherwise be entitled to receive, but for this paragraph, shall be reduced by the amount of benefit which is payable by virtue of the legislation of Australia in accordance with the provisions of Article 8(7).

**ARTICLE 4**

**Age pensions**

1. Where a person is qualified to receive an age pension under the legislation of Australia otherwise than by virtue of the provisions of this Agreement, or the former Agreement, that pension shall be payable and the provisions of this Article shall not apply under that legislation.

2. For the purpose of any claim by a person to receive an age pension under the legislation of Australia, that person shall be treated as an Australian resident for any period prior to that person’s last arrival in Australia for which:

   (a) that person; or
   (b) if that person is a woman who is or has been married, her husband,

   paid contributions, or had earnings or contributions credited under the legislation of the United Kingdom.
3. For the purpose of applying paragraph (2), any period during which the person (being a woman) and her husband both paid contributions or had earnings or contributions credited to them shall be counted only once.

4. For the purpose of applying paragraph (2), a period when the person or, if the person is a woman who is or has been married, her husband paid contributions or had earnings or contributions credited, which coincided with a period in which that person was an Australian resident, shall be counted only once.

5. A person who receives from Australia a wife’s pension or a spouse carer’s pension by virtue of the fact that the spouse of that person receives an age pension by virtue of this Article, shall, for the purpose of this Agreement, be deemed to receive that pension by virtue of this Agreement.

ARTICLE 5

UK Benefits for Widows

1. For the purpose of determining entitlement to widow’s benefit under the legislation of any part of the territory of the United Kingdom, a widow who is permanently resident in that part of the territory shall be treated as if her husband had paid contributions under the legislation of that part of the territory for any period during which he was resident in Australia between the ages of sixteen years and sixty-five years.

2. Where a widow who is permanently resident in any part of the territory of the United Kingdom was receiving a pension payable to widows under the legislation of Australia, otherwise than by virtue of this Agreement or the former Agreement, at the time when she was last in Australia, and is not qualified by virtue of paragraph (1) to receive widow’s allowance, widowed mother’s allowance or widow’s pension at the full standard rate under the legislation of that part of the territory of the United Kingdom where she is permanently resident, she shall be qualified under that legislation to receive at the full standard rate:

   (a) widow’s allowance if she had been receiving a pension payable to widows under the legislation of Australia for less than one
year in the case of Jersey and 26 weeks in the case of Guernsey; or

(b) widowed mother’s allowance if she is not qualified to receive widow’s allowance or if she has ceased to be qualified to receive widow’s allowance, and if she has a child in her family or if she has residing with her a person under the age of nineteen years or sixteen years in the case of Jersey or eighteen years in the case of Guernsey, and the pension payable to widows which she was receiving at the time when she was last in Australia was being paid to her on the basis that that child or person was her dependent child; or

(c) widow’s pension or retirement pension, as the case may require, if she is not qualified to receive widow’s allowance, or widowed mother’s allowance but had reached the age of fifty-five years or forty years where that widow is permanently resident in Jersey or Guernsey, either before she last left Australia or when she ceased to be qualified to receive widow’s allowance or widowed mother’s allowance.

3. Any pension which is awarded by virtue of this Article shall continue to be payable if the pensioner ceases to be permanently resident in one part of the territory of the United Kingdom, and becomes permanently resident in another part of the territory of the United Kingdom, and the competent authority of the latter part of the territory of the United Kingdom shall not determine entitlement under this Article.

4. Any widow’s benefit which is awarded by virtue of this Article shall cease to be payable if the widow ceases to be permanently resident in the territory of the United Kingdom.

5. Where a person is entitled to receive a benefit by virtue of the provisions of this Article, the rate of benefit which she would otherwise be entitled to receive, but for this paragraph, shall be reduced by the amount of benefit which is payable by virtue of the legislation of Australia in accordance with the provisions of Article 8(7).

6. The provisions contained in this Article shall apply, in an equal and opposite way to widowed father’s allowance under the legislation of Jersey.
7. In the case of widows’ benefit payable under the legislation of Jersey, contribution credits shall only be awarded to widows permanently resident in Jersey.

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

ARTICLE 6

UK Widowed Mother’s Allowance—Child in Australia

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

ARTICLE 7

Australian Benefits for Widows

1. Where a person is qualified to receive a pension payable to widows under the legislation of Australia otherwise than by virtue of the provisions of this Agreement or the former Agreement, that pension shall be payable and the provisions of this Article shall not apply under that legislation.

2. For the purpose of any claim to receive a pension payable to widows under the legislation of Australia, a widow shall be treated as if she had
been an Australian resident during any period for which her husband (or her last husband if more than one) had paid contributions or had had earnings or contributions credited to him under the legislation of the United Kingdom.

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

ARTICLE 8

Conversion of Australian Residence

1. For the purpose of calculating entitlement under the legislation of Great Britain, Northern Ireland or the Isle of Man, to any benefit in accordance with Articles 3 and 5, periods of residence in Australia before 6 April 1975 shall be treated as if they had been contribution or equivalent periods completed under that legislation.

2. For the purpose of calculating entitlement under the legislation of Great Britain, Northern Ireland or the Isle of Man, to any benefit in accordance with Articles 3 and 5, periods of residence in Australia on or after 6 April 1975 shall be treated as if a Class 3 contribution had been paid under that legislation for each week of residence.

3. Notwithstanding the provisions of paragraph (2), where residence in Australia during any tax year beginning on or after 6 April 1975 is for a period of less than the complete tax year then for each week of that period during which a person satisfies the competent authority that he or she was employed in Australia:

   (a) for each week up to 5 April 1987, a person shall be treated as having paid a contribution as an employed earner on earnings equivalent to two-thirds of that year’s upper earnings limit under the legislation of Great Britain, Northern Ireland or the Isle of Man;

   (b) for each week commencing on or after 6 April 1987, a person shall be treated as having earnings on which primary Class I contributions have been paid under the legislation of Great
Britain, Northern Ireland or the Isle of Man; these earnings shall be treated as equivalent to two-thirds of that year’s upper earnings limit.

4. For the purpose of calculating entitlement under the legislation of Guernsey to any benefit in accordance with Articles 3 and 5, residence in Australia between the ages of sixteen years and sixty-five years shall be treated as if a Class 3 contribution had been paid under the legislation of Guernsey for each week of residence.

5. For the purpose of calculating entitlement under the legislation of Jersey to any benefit in accordance with Articles 3 and 5, a person shall be treated:

(a) for each week completed during residence in Australia between the ages of sixteen years and sixty-five years, being a week in the relevant quarter, as having paid contributions which derive a quarterly contribution factor of 0.077 for that quarter;

(b) for each week completed during residence in Australia between the ages of sixteen years and sixty-five years, being a week in a relevant year, as having paid contributions which derive an annual contribution factor of 0.0193 for that year.

6. Where it is not possible to determine accurately the periods of time in which certain insurance periods were completed under the legislation of the United Kingdom, such periods shall be treated as if they did not overlap with periods of residence in Australia, and they shall be taken into account to the best advantage of the beneficiary.

7. For the purpose of calculating the rate of any benefit payable to a person under the legislation of the United Kingdom in accordance with the provisions of Articles 3, 5 or 13, the amount of any Australian benefit to be taken into account shall be initially the rate which that person is receiving at the date of entitlement to the United Kingdom benefit, and thereafter the rate which that person is receiving:

(a) on the date on which the latest uprating order, made by the Secretary of State for Social Security under section 63 of the Social Security Act 1986, came into effect; or

(b) in respect of Guernsey, on the date on which the latest Ordinance made under Section 19 of the Social Insurance (Guernsey) Law, 1978 came into effect; or
(c) in respect of Jersey, annually on 1 October in accordance with Article 13 of the Social Security (Jersey) Law 1974.

8. Notwithstanding the provisions of paragraph (7), where a person referred to in that paragraph has the rate of that Australian benefit reduced under the legislation of Australia upon being absent from Australia for 12 months, the benefit payable to that person under the legislation of the United Kingdom shall be adjusted upon that reduction occurring.

ARTICLE 9

Conversion of UK earnings factors or contribution factors

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

(a) the competent authority of Great Britain, Northern Ireland or the Isle of Man shall divide any earnings factor achieved in any tax year commencing after 5 April 1975 under its legislation, by that years lower earnings limit;

(b) the competent authority of Jersey shall multiply any contribution factor achieved by a person under its legislation:

   (i) by thirteen in the case of a quarterly contribution factor; and

   (ii) by fifty-two in the case of an annual contribution factor.

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

ARTICLE 10

Family Allowance

1. Where a person who has been resident in Australia becomes permanently resident in the territory of the United Kingdom, the period during which that person was resident in Australia shall be treated, for the purpose of a claim by the person for family allowance under the legislation of the United Kingdom, as a period during which that person was resident in that territory.

2. For the purpose of any claim to family allowance under the legislation of Guernsey, a person whose place of birth is in Australia shall be treated as if his or her place of birth was in Guernsey.

3. In the case of Jersey, family allowance shall only be paid in respect of a child who is ordinarily resident in Jersey.

ARTICLE 11

Guardian’s Allowance

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

2. If either parent of a child referred to in paragraph (1) was born in Australia, that parent shall be treated as if he or she had been born in the United Kingdom.
PART IV—SICKNESS BENEFITS AND INVALIDITY BENEFITS

ARTICLE 12

Australian Sickness Benefit

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

ARTICLE 13

UK Sickness Benefit and Invalidity Benefit

1. Where a person who is permanently resident in the territory of the United Kingdom and is ordinarily gainfully occupied, or would be, but for his or her incapacity for work, claims sickness or invalidity benefit under the legislation of the relevant part of that territory, then, for the purpose of calculating entitlement to those benefits, periods during which that person was in Australia shall be treated in accordance with the provisions of this Article.

2. For the purpose of calculating entitlement under the legislation of Great Britain, Northern Ireland or the Isle of Man to sickness or invalidity benefit:

   (a) periods of gainful occupation completed in Australia before 6 April 1975 shall be treated as if they had been contribution or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man; and

   (b) periods completed as a self-employed person in Australia after 5 April 1975 shall be treated as if they have been contribution periods completed as a self-employed person or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man.

3. For the purpose of calculating an earnings factor for assessing entitlement to sickness or invalidity benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man, a person shall be
treated for each week beginning in a relevant tax year, during which he or she was an employed person in Australia, as follows:

(a) for each week commencing on or after 6 April 1975 and up to 5 April 1987, as having a contribution paid as an employed earner on earnings equivalent to two-thirds of that year’s upper earnings limit; and

(b) for each week beginning in a relevant tax year commencing on or after 6 April 1987, as having earnings on which primary Class 1 contributions have been paid. These earnings shall be treated as equivalent to two-thirds of that year’s upper earnings limit.

4. For the purpose of calculating entitlement under the legislation of Guernsey to sickness or invalidity benefit:

(a) periods during which a person was gainfully occupied as an employed person in Australia shall be treated as if they had been contribution or equivalent periods completed as an employed person under the legislation of Guernsey; and

(b) periods during which a person was gainfully occupied as a self-employed person in Australia shall be treated as if they had been contribution or equivalent periods completed as a self-employed person under the legislation of Guernsey.

5. For the purpose of calculating entitlement under the legislation of Jersey to any benefit in accordance with this Article, a person shall be treated:

(a) for each week completed during residence in Australia between the ages of sixteen years and sixty-five years being a week in the relevant quarter, as having paid contributions which derive a quarterly contribution factor of 0.077 for that quarter;

(b) for each week completed during residence in Australia between the ages of sixteen years and sixty-five years being a week in a relevant year, as having paid contributions which derive an annual contribution factor of 0.0193 for that year.

6. For the purpose of calculating entitlement under the legislation of the relevant part of the territory of the United Kingdom to sickness or invalidity benefit, a person shall be treated as if he or she had had earnings or contributions credited to him or her:
(a) as an employed person for any week during which he or she was in Australia and was unemployed and available for work or was incapable of work, if that week was part of a period during which he or she was or would ordinarily have been employed; and

(b) as a self-employed person for any other week during which he or she was in Australia and was incapable of work, if that week was part of a period during which he or she was or would ordinarily have been self-employed.

7. Where a person who is permanently resident in the territory of the United Kingdom was receiving a sickness benefit, an invalid pension, a sheltered employment allowance or a rehabilitation allowance under the legislation of Australia when he or she was last in Australia and is incapable of work at the time when he or she arrives in the territory of the United Kingdom, he or she shall be treated under the legislation of the United Kingdom as if, at that time and for so long as he or she continues from that time to be incapable of work, he or she satisfied the contribution conditions under which sickness or invalidity benefit is payable.

8. For the purpose of any claim to invalidity benefit under the legislation of the United Kingdom, any period in respect of which a person received sickness benefit or an invalid pension under the legislation of Australia shall be treated as if it were a period of entitlement to sickness benefit or invalidity benefit completed under the legislation of the United Kingdom.

9. Nothing in this Article shall diminish any right which a person has, apart from this Agreement, to receive sickness or invalidity benefit under the legislation of the United Kingdom.

10. Where a person is entitled to receive a benefit by virtue of the provisions of this Article, the rate of benefit which he or she would otherwise be entitled to receive, but for this paragraph, shall be reduced by the amount of benefit which is payable by virtue of the legislation of Australia in accordance with the provisions of Article 8(7).
PART V—UK UNEMPLOYMENT BENEFIT

ARTICLE 14

1. Where a person who is permanently resident in the territory of the United Kingdom except for Jersey claims unemployment benefit under the legislation of any part of that territory, then, for the purpose of calculating entitlement to that benefit, periods during which that person was in Australia shall be treated in accordance with the provisions of this Article.

2. Periods of gainful occupation as an employed person in Australia before 6 April 1975 shall be treated as if they had been contribution or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man.

3. For the purpose of calculating an earnings factor for assessing entitlement to unemployment benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man, a person shall be treated for each week beginning in a relevant tax year, during which he or she was an employed person in Australia, as follows:

   (a) for each week commencing on or after 6 April 1975 and up to 5 April 1987, as having a contribution paid as an employed earner on earnings equivalent to two-thirds of that year’s upper earnings limit; and

   (b) for each week beginning in a relevant tax year commencing on or after 6 April 1987, as having earnings on which primary Class 1 contributions have been paid. These earnings shall be treated as equivalent to two-thirds of that year’s upper earnings limit.

4. For the purpose of calculating entitlement to unemployment benefit under the legislation of Guernsey, periods during which a person was gainfully occupied as an employed person in Australia shall be treated as if they had been contribution or equivalent periods completed as an employed person under the legislation of Guernsey.

5. A person shall be treated as if he or she had had earnings or contributions credited to him or her as an employed person for any week during which he or she was in Australia and was unemployed and
available for work or was incapable of work, if that week was part of a period during which he or she was or would ordinarily have been gainfully occupied under a contract of service.

6. Nothing in this Article shall diminish any right which a person has, apart from this Agreement, to receive unemployment benefit under the legislation of the United Kingdom.

7. The provisions of this Article shall not apply to a person who claims unemployment benefit under the legislation of Guernsey and who has not paid 26 contributions as an employed person under that legislation.

**PART VI—MISCELLANEOUS PROVISIONS**

**ARTICLE 15**

**Temporary Absences**

1. A benefit which is payable to a person by Australia under Part II of this Agreement shall not cease to be payable solely where the person is absent from Australia and the competent authority of Australia is satisfied that the absence is temporary. After the person has been temporarily absent from Australia for a period of 12 months at any one time that person shall then be deemed to have departed permanently from Australia.

2. Where a person, who is qualified to receive any benefit under the legislation of the United Kingdom, would be qualified to receive also an increase of that benefit for a dependant if the dependant were in that territory, he or she shall be qualified to receive that increase while the dependant is temporarily in Australia.

**ARTICLE 16**

**Calculation of Australian Benefits**

1. Subject to paragraph (5), the provisions of this Article shall apply, in relation to the territory of the United Kingdom, only to retirement pensions and widows’ benefits, and, in relation to Australia only to age pensions, wives’ pensions, spouse carer’s pensions and pensions.
payable to widows, being benefits payable under the legislation of Australia solely by virtue of this Agreement; and, for the purpose of applying those provisions, the effect of any provision of the legislation of any part of the territory of the United Kingdom which concerns overlapping benefits shall be disregarded.

2. Subject to the provisions of paragraph (3), where a person who is qualified to receive an Australian benefit also receives a United Kingdom benefit, the rate of that Australian benefit shall be set by:

(a) calculating that person’s income according to the legislation of Australia but disregarding in that calculation the United Kingdom benefit received by that person;
(b) deducting the amount of the United Kingdom benefit received by that person from the maximum rate of that Australian benefit; and
(c) applying to the remaining benefit obtained under sub-paragraph (b) the relevant rate calculation set out in the legislation of Australia using as the person’s income the amount calculated under sub-paragraph (a).

3. Where a married person is, or both that person and his or her spouse are, in receipt of a United Kingdom benefit or benefits, each of them shall be deemed, for the purpose of paragraph (2) and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

4. If a person would receive an Australian benefit except for the operation of paragraph (2) or except for that person’s failure to claim the benefit, then for the purpose of a claim by that person’s spouse for a payment under the legislation of Australia that person shall be deemed to receive that benefit.

5. The reference in paragraph (4) to a payment under the legislation of Australia to the spouse of a person is a reference to a payment of:

(a) an age pension;
(b) an invalid pension;
(c) an unemployment benefit;
(d) a sickness benefit;
(e) a sheltered employment allowance; or
(f) a rehabilitation allowance,
under that legislation, whether payable by virtue of this Agreement or otherwise.

6. For the purpose of this Article “benefit” includes any additional earnings-related pension, incremental addition, invalidity allowance and age addition payable with the benefit.
ARTICLE 17

Dual Entitlement in Australia

Where:

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

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

ARTICLE 18

Dual Entitlement in UK

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

ARTICLE 19

Recovery of Benefit

1. Where a benefit is payable by a Party to a person in respect of a past period (in this Article referred to as “the first benefit”), and

(a) for all or part of that same period, the other Party has paid to that person a benefit under its legislation (in this Article referred to as “the second benefit”); and
(b) the amount of the second benefit would have been reduced had the first benefit been paid during that period, the competent authority of the former Party, at the request of the competent authority of the latter Party, shall:

(c) deduct from the first benefit an amount equal to the amount of the second benefit that would not have been paid had the first benefit been paid on a periodical basis throughout that past period; and

(d) transmit any sum deducted in accordance with sub-paragraph (c) above to the competent authority of the latter Party.

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

2. Where the United Kingdom has paid a benefit to a person in respect of a past period and:

(a) for all or part of that same period, Australia has paid to that person a benefit under its legislation; and

(b) the amount of the benefit paid by Australia would have been reduced had the United Kingdom paid its benefit during that period, the competent authority of Australia may determine that:

(c) the amount of its benefit which would not have been paid had the United Kingdom paid its benefit on a periodical basis throughout that period is a debt due by that person to Australia; and

(d) the amount, or any part, of that debt may be recovered from future benefits which Australia may pay under its legislation to that person.

3. A reference in paragraphs (1) or (2) to a payment under the legislation of a Party means a benefit payable whether by virtue of this Agreement or otherwise.

4. Where a person has received income support under the legislation of Great Britain, Northern Ireland or the Isle of Man for a period for which that person subsequently becomes entitled to any benefit under the legislation of Australia, the competent institution of Australia, at the request of and on behalf of the competent institution of Great Britain, Northern Ireland or the Isle of Man, shall withhold from the benefit due for that period the amount by which the income support paid exceeded what would have been paid had the benefit under the legislation of

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Social Security (International Agreements) Act 1999
Australia been paid before the amount of income support was
determined, and shall transmit the amount withheld to the competent
institution of Great Britain, Northern Ireland or the Isle of Man.

ARTICLE 20

Meaning of Permanently Resident

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

ARTICLE 21

Gainful occupation in Australia

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

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

PART VII—ADMINISTRATION

ARTICLE 22

Administrative Arrangements

The competent authorities of the United Kingdom of Great Britain and Northern
Ireland and the Secretary to the Department of Social Security for the
Government of Australia shall make whatever administrative arrangements are
necessary from time to time in order to implement this Agreement.
ARTICLE 23

Disclosure of Information

1. The competent authorities may supply to each other such information as is necessary for the operation of this Agreement or of the legislation of each territory to which this Agreement applies as if the matter involved the application of their own legislation.

2. Any information received by a competent authority pursuant to paragraph (1) shall be protected in the same manner as information obtained under the legislation of that territory and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with matters, including the determination of appeals, arising under the provisions of this Agreement and of the legislation to which this Agreement applies and shall be used only for those purposes.

3. In no case shall the provisions of paragraphs (1) and (2) be construed so as to impose on the competent authority of either Party the obligation:

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

4. The competent authorities shall notify each other of legislation that supersedes, amends, supplements or replaces the legislation within the scope of this Agreement in relation to their respective Parties, promptly after the first-mentioned legislation is enacted.

5. The appropriate competent authority shall also provide copies of the relevant legislation and of related explanatory material and any further amplification or clarification that the other competent authority may request.
PART VIII—TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 24

Transitional Provisions

1. No provision of this Agreement shall confer any right to receive any payment of a benefit for a period before the date of the entry into force of this Agreement.

2. Any contribution which a person has paid or earnings or contributions credited under the legislation of the United Kingdom before the date of the entry into force of this Agreement, and any period during which a person was resident in Australia before that date, shall be taken into account for the purpose of determining the right to receive a benefit in accordance with the provisions of this Agreement under the legislation of Australia and under the legislation of the United Kingdom respectively.

3. Subject to paragraph (4), where, on the date on which this Agreement enters into force, a person:

(a) is in receipt of a benefit under the legislation of either Party by virtue of the former Agreement; or

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

no provision of this Agreement shall affect the entitlement to receive that benefit.

4. The rate of a benefit which is payable by virtue of paragraph (3) shall, subject to this Agreement, be assessed in accordance with the provisions of the legislation of the relevant Party.
ARTICLE 25

Entry into Force

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

2. Subject to the provisions of Article 24, the former Agreement shall terminate on the date of entry into force of this Agreement.

ARTICLE 26

Termination Provisions

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

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

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

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

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

For the Government of For the Government of the
Australia: United Kingdom of Great
Graham Richardson Britain and Northern Ireland:
Caithness

40 Social Security (International Agreements) Act 1999
[Signatures omitted]
PART B


Note No. 29

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

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

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

22 April 1992
British High Commission
CANBERRA

Note No. 312327

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

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

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

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

CANBERRA
PART C


Note No. 30

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

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

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

“ARTICLE 15A

UK INCREASES FOR DEPENDANTS

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

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

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

22 April 1992
British High Commission
Canberra

Note No. 312326

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

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

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

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

   “ARTICLE 15A

   UK INCREASES FOR DEPENDANTS

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

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

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

CANBERRA
22 April 1992.
Schedule 2—Italy

PART A

Note: See section 5.

AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA AND THE REPUBLIC OF ITALY

Australia and the Republic of Italy,

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

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

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

PART I — INTERPRETATION AND SCOPE

ARTICLE 1

Interpretation

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

   (a) “supplement for children” means, in relation to Australia, the additional family payment and, if applicable, the guardian allowance that would be payable to a person in addition to a benefit under the legislation of Australia if that person were an Australian resident in Australia and qualified for that payment and, if applicable, that allowance;

   (b) “Australian resident” means an Australian resident as defined in the legislation of Australia;

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

   (d) “competent authority” means,

       in relation to Australia:
       the Secretary to the Department of Social Security; and,

       in relation to Italy:
       the Ministry of Labour and Social Welfare;

   (e) “dependants” means, in relation to Italy, persons who are within the categories of family members of an insured person or pensioner under the legislation of Italy and who are recognised by that legislation as the dependants of that person or pensioner;
(f) “disability support pension” means, in relation to Australia, the payment made under the legislation of Australia to people who are considered to be severely disabled under that legislation;

(g) “institution” means,

in relation to Australia:
the Department of Social Security; and

in relation to Italy:
an institution, apart from the competent authority, which is responsible for the application of this Agreement as specified in the administrative arrangements for this Agreement;

(h) “Italian integration” means the integrazione al minimo paid to increase the amount of a benefit derived from contributions or otherwise to the minimum amount specified under the legislation of Italy;

(i) “Italian social supplement” means that welfare benefit granted in addition to the pensions of those people who have incomes lower than the amount fixed by Italian legislation;

(j) “legislation” means the laws specified in Article 2;

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

(l) “period of credited contributions” means a period or the total of two or more periods of contributions used to acquire an entitlement to a benefit and any period deemed to be a period of contributions under the legislation of Italy;

(m) “spouse carer pension” means a carer pension payable, under the legislation of Australia, to the partner of a person who is in receipt of a disability support pension or of an age pension;
(n) “survivors” means, in relation to Italy, persons who are within the categories of family members of a person who was insured or was a pensioner under the legislation of Italy and is now deceased, and who are recognised by that legislation as survivors of that person or pensioner;

(o) “widow” means a de jure widow;

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

ARTICLE 2

Legislative Scope

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

(a) in relation to Australia: the Social Security Act 1991 in so far as the Act provides for, applies to or affects the following benefits:

(i) age pension;
(ii) disability support pension
(iii) wife pension;
(iv) pensions payable to widows;
(v) widowed person allowance;
(vi) spouse carer pension;
(vii) double orphan pension; and
(viii) supplements for children.
(b) in relation to Italy: the legislation in force at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that legislation, concerning the compulsory general insurance scheme for employees in regard to invalidity, old age and survivors; special insurance schemes for self-employed persons and other categories of workers; family benefits for dependants of pensioners and unemployment insurance and, in particular, the following benefits:

(i) old age pensions;
(ii) seniority pensions;
(iii) anticipated pensions;
(iv) invalidity allowances;
(v) inability pensions;
(vi) privileged invalidity allowances;
(vii) privileged inability pensions;
(viii) invalidity attendance allowance;
(ix) survivors’ pensions;
(x) family benefit for dependants of pensioners; and
(xi) unemployment allowances.

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

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

Personal Scope

This Agreement shall apply to any person who:

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

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

ARTICLE 4

Equality of Treatment

1. The citizens of each of the Parties shall be treated equally in the application of the legislation of Australia and of Italy respectively and, in any case where qualification for a benefit under the legislation of a Party depends, in whole or in part, on citizenship of that Party, a person who is a citizen of the other Party shall, for the purposes of a claim for that benefit, be deemed to be a citizen of the first mentioned Party.

2. All persons to whom this Agreement applies shall be treated equally by the Parties in regard to entitlements and obligations derived from the legislation of the Parties and from this Agreement.

3. A Party shall not be required to apply paragraphs 1 and 2 of this Article to a person who is present in the territory of that Party without lawful authority.
PART II — PROVISIONS RELATING TO BENEFITS

AUSTRALIAN BENEFITS

ARTICLE 5

Residence or Presence in Italy or in a Third Country

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

   (a) is an Australian resident or residing in the territory of Italy or of a third country with which Australia has implemented an agreement that includes provision for co-operation in the lodgement and determination of claims for benefits, and

   (b) is in Australia, the territory of Italy or the territory of that third country,

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

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

ARTICLE 6

Partner-related Australian benefits

A person who receives or is qualified to receive a benefit under the legislation of Australia due to the fact that his or her partner receives or is qualified to receive an Australian benefit by virtue of this Agreement, shall receive a rate calculated under this Agreement.
ARTICLE 7

Totalisation of Periods of Residence and Periods of Contributions

Totalisation for Australia

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

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

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

   (c) a period of credited contributions in Italy;

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

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

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

   (b) has accumulated a period of credited contributions in Italy in 2 or more separate periods that equals or exceeds in total the period referred to in sub-paragraph (a);

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

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

Social Security (International Agreements) Act 1999
4. The minimum period of Australian working life residence to be taken into account for the purposes of sub-paragraph 1(b) shall be as follows:

   (a) for the purposes of an Australian benefit payable to a person outside Australia: the minimum period required shall be 12 months, of which at least 6 months must be continuous; and

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

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

ARTICLE 8
Calculation of Australian Benefits

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

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

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

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

3. Subject to the related provisions in this Article, where an Australian benefit, other than a double orphan pension, is payable under this agreement to a person who is an Australian resident and in Australia, the rate of that benefit shall be determined by:

(a) calculating that person’s income according to the legislation of Australia but disregarding in that calculation any Italian benefit (including any Italian integration and/or social supplement and family benefit for dependants of pensioners) to which that person is entitled;

(b) deducting that Italian benefit (including any Italian integration and/or social supplement and family benefit for dependants of pensioners) from the maximum rate of the Australian benefit; and

(c) applying to the Australian benefit remaining, after the application of sub-paragraph (b), the relevant rate calculation set out in the legislation of Australia, using as the person’s income the result from the application of sub-paragraph (a).

4. For the purposes of this Article and for the application of the legislation of Australia, where a member of a couple is, or both his or her partner are, entitled to receive an Italian benefit or benefits, each of them shall be deemed to be in receipt of one half of either the amount of that benefit or of the total of the benefits, as the case may be.
ARTICLE 9

Double Orphan Pension and Spouse Carer pension

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

2. For the purposes of qualification for a spouse carer pension under this Agreement, a person who is in Italy shall be regarded as being in Australia.

ARTICLE 10

Exclusion of Specified Italian Payments from the Australian Income Test

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

2. For the purposes of this Article only, the term “benefit” shall include job search, newstart and sickness allowances payable under the social security laws of Australia.
ITALIAN BENEFITS

ARTICLE 11

Totalisation of Periods of Contributions and Periods of Residence

Totalisation for Italy

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

   (a) a period of credited contributions in Italy that is less than the period required to qualify that person under the legislation of Italy for a benefit; and

   (b) a period of credited contributions equal to or greater than the minimum period identified for that benefit for that person in paragraph 2; and

   (c) a period of Australian working life residence;

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

2. The minimum period of credited contributions in Italy to be taken into account for the purposes of paragraph 1 shall be as follows:

   (a) for old age pension: 1 year;

   (b) for anticipated pension: 1 year;

   (c) for seniority pension: 15 years;

   (d) for invalidity allowance: 1 year;

   (e) for inability pension: 1 year;

   (f) for privileged invalidity pension allowance: 1 year;

   (g) for privileged inability pension: 1 year; and
(h) for survivor’s pension: 1 year.

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

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

ARTICLE 12

Italian Pro-Rata Benefits

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

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

(b) the amount of benefit payable shall be that amount which bears to the amount referred to in sub-paragraph (a) the same ratio as that period of credited contributions bears to the sum of that period of credited contributions and that period of Australian working life residence for that person.

2. If the sum of the periods referred to in sub-paragraph 1(b) exceeds the maximum period provided for by the legislation of Italy for entitlement to the maximum rate of the benefit concerned, the maximum period shall be substituted for that sum in calculations made in accordance with that sub-paragraph.
3. The calculation of a rate in relation to a person in accordance with paragraph 1 shall take into account only the salary or income of that person which was subject to contributions under the legislation of Italy.

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

ARTICLE 13

Exclusion of Specified Australian Payments from the Italian Income Test

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

ARTICLE 14

Unemployment Allowance

For the purposes of eligibility by a citizen of Australia or of Italy for unemployment allowance under the social security laws of Italy, any periods of employment accumulated in Australia by that person, other than periods of self-employment, shall be totalised with periods of credited contributions in Italy for that person, if those last-mentioned periods total one year or more.
ARTICLE 15

Family Benefits

Family benefits payable under the legislation of Italy:

(a) shall be payable under this Agreement to Australian residents who are receiving an Italian benefit payable under the social security laws of Italy, whether those persons are citizens of Australia or of Italy; and

(b) shall not preclude the payment of family payments under the social security laws of Australia, including those laws as modified or adapted by laws giving effect to an agreement on social security with a third country,

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

(c) wife pension;

(d) spouse carer pension; and

(e) supplements for children.

PART III — MISCELLANEOUS PROVISIONS

ARTICLE 16

Lodgement of Claims

1. A claim for benefit, under this Agreement or otherwise, may be lodged:

(a) in the territory of either Party in accordance with the administrative arrangements for this Agreement; or

(b) in a third country if that country is of the kind referred to in Article 5,

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

ARTICLE 17

Determination of Claims

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

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

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

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

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

62 Social Security (International Agreements) Act 1999
4. Where a claim for a benefit is determined in accordance with the preceding paragraph 3 and it is subsequently established that the amount of the assumed benefit in relation to that person was not in fact paid, any deficiency in the payment of the first-mentioned benefit shall be adjusted retrospectively.

5. Where:

(a) it appears that a person who is entitled to the payment of a benefit by one of the Parties might also be entitled to the payment of a benefit by the other Party, in either case whether by virtue of this Agreement or otherwise;

(b) the amount of the benefit that might be paid by that other Party would affect the amount of the benefit payable by the first-mentioned Party; and

(c) the amount that could be due in respect of the benefit by that other Party, whether by virtue of this Agreement or otherwise, is likely to include an adjustment for arrears of that benefit,

then

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

(e) the first mentioned Party may deduct from the amount of those arrears any excess amount of the benefit paid by it and shall pay any balance remaining to that person.

ARTICLE 18

Portability of Benefits

1. Benefits of one Party are also payable in the territory of the other Party.

2. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable under this Agreement, is also payable outside the territories of both Parties.
3. Where qualification for a benefit of one Party is subject to limitations as to time, then references to that Party in those limitations shall be read also as references to the territory of the other Party.

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

ARTICLE 19

Administrative Arrangements

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

ARTICLE 20

Exchange of Information and Mutual Assistance

1. The competent authorities and institutions responsible for the application of this Agreement:

(a) shall communicate to each other any information necessary for the application of this Agreement and of their respective social security laws;

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

(c) shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation in so far as those changes affect the application of this Agreement; and
(d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the parties with third countries, to the extent and in the circumstances specified in the administrative arrangements for this Agreement.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any administrative arrangements made pursuant to Article 19.

3. Any information about a person transmitted under this Agreement to an institution shall be protected in the same manner as information obtained under the legislation of that Party.

4. In no case shall the provisions of paragraph 1 be construed so as to impose on the competent authority or the institution of a Party the obligation:

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

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

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

   **ARTICLE 21**

   **Appeals**

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

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

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*Social Security (International Agreements) Act 1999* 65
3. Subject to paragraph 4, the date on which appeals and related document are lodged in accordance with paragraph 2 with the institution of one Party shall be regarded as the date of lodgement of those appeals and related documents with the institution of the other Party.

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

ARTICLE 22

Review of Agreement

1. The Parties may agree at any time to review the whole or any part of this Agreement.

2. Subject to paragraph 1, the Parties shall consult regarding a review of this Agreement and its implementation after the Agreement has been in force for 4 years.

3. Where a party amends, supplements or replaces its legislation, the Parties shall, if one Party so requests, consult on any consequences of that change to the legislation and on the continuing implementation of the Agreement including on whether an amendment to the Agreement is necessary.

PART IV — FINAL PROVISIONS

ARTICLE 23

Entry into Force and Transitional Provisions

1. This Agreement shall be ratified by both Parties in accordance with their respective procedures and shall enter into force on the first day of the month following that in which there has been an exchange of instruments of ratification.

2. When this Agreement enters into force the Agreement between Australia and the Republic of Italy on Social Security signed on 23 April 1986 shall, subject to paragraph 3, terminate.

3. Subject to paragraph 4, where, on the date on which this Agreement enters into force, a person:
(a) is in receipt of a benefit under the legislation of either Party by virtue of the Agreement which was signed on 23 April 1986; or

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

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

4. The rate of a benefit for which a person is qualified by virtue of paragraph 3 shall, subject to this Agreement, be assessed in accordance with the provisions of the legislation of the relevant Party.

5. Where a resident of Italy:

(a) was in receipt of a widow B pension from Australia and had that pension cancelled because of the enactment of section 1215 of the Social Security Act 1991; or

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

then that cancelled pension shall be reinstated back to the date of cancellation or that application shall be determined as if section 1215 had not been enacted.

The rate of the reinstated widow B pension or of the widow B pension paid under any successful application shall be calculated under the provisions of the Agreement mentioned in paragraph 2 of this Article until this Agreement comes into force and thereafter shall be calculated under this Agreement.

ARTICLE 24

Termination

1. Subject to paragraph 2, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention to terminate this Agreement.
2. In the event this Agreement is terminated in accordance with paragraph 1, the Agreement shall continue to have effect in relation to all persons who:

   (a) at the date of termination, are in receipt of benefits under this Agreement; or

   (b) before the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits under this Agreement.

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

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

FOR AUSTRALIA

FOR THE REPUBLIC

OF ITALY

[Signatures omitted]

PART B

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

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

The Department notes that since the agreement was signed there have been changes to the legislation of both Parties which affect the interpretation and implementation of the Agreement.
Therefore the Department has the honour to propose the following amendments to, and clarifications of the Agreement:

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

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

2. The definition in Article 1.1(h) of “Italian integration” shall be read so as to include also the differential amount according to Law 335/95 of Italy in addition to that which is already covered in that definition.

3. The benefit referred to as “carer pension” in Article 1.1(m) shall read “carer payment”.

4. The benefit referred to as “widowed person allowance” in sub-paragraph (v) of Article 2.1(a) shall read “bereavement allowance”.

5. In the interpretation of Article 8.1 where reference is made to the rate of the benefit being determined under Australian legislation, that rate shall always be read so as not to exceed the rate payable to the relevant person if that person were in Australia and had met the residential requirements for that benefit.

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

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

The Embassy of Italy presents its compliments to the Department of Foreign Affairs and Trade and has the honour to refer to the Department’s Note No. LGB 00/838 of 31 May 2000 which reads as follows:
“The Department of Foreign Affairs and Trade presents its compliments to the Embassy of Italy and has the honour to refer to the Agreement on Social Security between Australia and the Republic of Italy, done at Rome on 13 September 1993 (“the Agreement”) and to recent discussions between the relevant authorities of Australia and the Republic of Italy.

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

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

1. The definition in Article 1.1(g) of the agreement shall be read as follows: “(g) institution – means an institution apart from the competent authority which is responsible for the application of this Agreement as specified in the administrative arrangements for this Agreement,”

2. The definition in Article 1.1(h) of “Italian integration” shall be read so as to include also the differential amount according to Law 335/95 of Italy in addition to that which is already covered in that definition.

3. The benefit referred to as “carer pension” in Article 1.1(m) shall read “carer payment”.

4. The benefit referred to as “widowed person allowance” in sub-paragraph (v) of Article 2.1(a) shall read “bereavement allowance”.

5. In the interpretation of Article 8.1 where reference is made to the rate of the benefit being determined under Australian legislation, that rate shall always be read so as not to exceed the rate payable to the relevant person if that person were in Australia and had met the residential requirements for that benefit.
If the foregoing proposal is acceptable to the Embassy of Italy, the Department of Foreign Affairs and Trade has the honour to propose that this Note and the reply from the Embassy of Italy to that effect, shall constitute an agreement between the Government of Australia and the Government of the Republic of Italy, which shall enter into force on the same day as the Agreement enters into force.

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

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

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

Embassy of Italy
Canberra
31 May 2000
PART A

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

The Government of Australia, and

The Government of New Zealand

Referred to in this Agreement as “the Parties”

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

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

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

HAVE agreed as follows:

PART I

DEFINITIONS AND SCOPE

ARTICLE 1

Definitions

1. In this Agreement unless the context otherwise requires:

(a) “Australian resident” has the meaning given to it under Article 5;

(b) “benefit”, in relation to a Party, means the benefits as listed and defined in Article 2 and unless otherwise stated includes any amount, increase or supplement that is payable in addition to that benefit or in respect of a person who is eligible for that amount, increase or supplement under the social security law of that Party;
(c) “competent authority”, in relation to New Zealand, means the Chief Executive of the Ministry of Social Policy and in relation to Australia, the Secretary of the Department of Family and Community Services;

(d) “competent institution”, in relation to a Party, means the institution or institutions that are responsible for the administration of the social security law of that Party;

(e) “CPI” means the Consumer Price Index (All Groups) Australia wide, kept by the Australian Statistician and published from time to time by the Australian Bureau of Statistics, and in the event of the CPI being discontinued or abolished then such price index as the Australian Statistician substitutes for it;

(f) “date of severe disablement” means the date a person who applies for a disability support pension or invalid’s benefit was first assessed as meeting the criteria for a disability support pension or invalid’s benefit under this Agreement or, where evidence supports an earlier date, the competent institutions may agree on an earlier date;

(g) “financial year” means the period from 1 July of any year to 30 June of the next year;

(h) “living alone”, in relation to New Zealand superannuation or veteran’s pension, has the meaning given to it under the social security law of New Zealand; and “not living alone” has a corresponding meaning;

(i) “month”, in relation to New Zealand, means a calendar month, but where fractions of a month are to be aggregated, a month means 30 days;

(j) “New Zealand resident” has the meaning given to it under Article 5;

(k) “permanent resident” has the meaning given to it under Article 5;

(l) “severely disabled” means a person who:

(i) has a physical impairment, a psychiatric impairment, an intellectual impairment, or two or all of such impairments, which makes the person, without taking into account any other factor, totally unable:

(aa) to work for at least the next 2 years; and
(bb) unable to benefit within the next 2 years from participation in a program of assistance or a rehabilitation program; or

(ii) is permanently blind;

(m) “social security law”, in relation to a Party, means the laws of that Party specified in Article 2;

(n) “territory”, in relation to New Zealand, means: New Zealand only and not the Cook Islands, Niue or Tokelau; and, in relation to Australia, means: Australia as defined in the social security law of Australia; and references to “New Zealand”, “Australia” or the “territory” of either shall be read accordingly;

(o) “third country residence” has the meaning given to it under Article 5;

(p) “working age residence” has the meaning given to it under Article 5;

(q) “year” means 12 calendar months;

(r) “1994 Agreement” means the Agreement on Social Security between the Government of New Zealand and the Government of Australia done at Wellington on 19 July 1994, as amended on 7 September 1995 and 2 July 1998; and

(s) “1994 Agreement benefit” means a benefit defined in the 1994 Agreement in Article 2, paragraph 1, subparagraphs (a)(i), (ii), (iii), (iv), (v), (vi) and (vii).

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

ARTICLE 2
Legislative Scope

1. Except as provided under paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any legislation that subsequently amends, supplements, consolidates or replaces them:

(a) in relation to Australia: the Acts forming the social security law in so far as those Acts provide for, apply to or affect the following benefits:
(i) age pension;
(ii) disability support pension;
(iii) carer payment in respect of the partner of a person who is in receipt of a disability support pension; and

(b) in relation to New Zealand: the Social Security Act 1964 and the Social Welfare (Transitional Provisions) Act 1990 in so far as they provide for, apply to or affect the following benefits:
(i) New Zealand superannuation;
(ii) veteran’s pension; and
(iii) invalid’s benefit.

2. For the purposes of this Agreement an Australian disability support pension and a New Zealand invalid’s benefit shall be limited to cases where:
(a) the person is severely disabled;
(b) the person was a resident of one of the Parties at the date of severe disablement; and
(c) the person, prior to the date of severe disablement, was residing in the territory of the other Party for a period of not less than one year at any time.

ARTICLE 3
Personal Scope
This Agreement shall apply to any person who:
(a) is or has been an Australian resident; or
(b) is or has been a New Zealand resident.

ARTICLE 4
Equality of Treatment
Except as provided for in this Agreement, the persons to whom this Agreement applies shall be treated equally by each of the Parties in regards to rights and obligations that arise under the social security law of that Party or as a result of this Agreement.
ARTICLE 5
Residence Definitions

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

and “residence in Australia” has a corresponding meaning.

2. “New Zealand resident” means, in relation to New Zealand, a person who has or had New Zealand as their principal place of residence except where that person was unlawfully resident or present in New Zealand or lawfully resident or present in New Zealand only by virtue of:
   (a) a visitor’s permit;
   (b) a temporary work permit; or
   (c) a permit to be in New Zealand for the purposes of study at a New Zealand school or university or other tertiary educational establishment;

and “residence in New Zealand” has a corresponding meaning.

3. “permanent resident” in relation to Australia means a person who is a citizen of Australia or who holds a permanent visa under the Migration Act 1958 of Australia.

4. “third country residence” means a period of residence when a person was not either an Australian resident or a New Zealand resident.
5. “working age residence” in relation to a person means a period of residence between the ages of 20 and 64 years inclusive (being a maximum of 45 years) but does not include any period deemed pursuant to Article 8 or Article 12 to be a period in which that person was an Australian resident or a New Zealand resident.

PART II
PROVISIONS RELATING TO NEW ZEALAND BENEFITS

ARTICLE 6
Residence in Australia

1. Where a person would be entitled to receive a benefit under the social security law of New Zealand (including a person who would be entitled under Article 8) except that he or she is not ordinarily resident or resident and present in New Zealand on the date of application for that benefit, that person shall be deemed, for the purposes of that application, to be ordinarily resident and resident and present in New Zealand on that date, if he or she:
   (a) is present either in Australia or New Zealand;
   (b) is an Australian resident, including a person who has the intention of remaining an Australian resident for at least one year or has been residing in Australia for at least 26 weeks;
   (c) has been a New Zealand resident at any time in his or her life for a continuous period of at least 1 year since attaining the age of 20 years; and
   (d) in the case of New Zealand superannuation or a veteran’s pension, is over the age of 65.

2. Subject to this Agreement, where a person is entitled to receive a benefit under the social security law of New Zealand (including a person who is entitled under paragraph 1, or Article 7, or both) but payment of that benefit is conditional on presence in New Zealand, that person shall be deemed, for the purpose of the payment of that benefit, to be present in New Zealand, if he or she is an Australian resident, and present either in Australia or New Zealand.

3. For the purposes of this Part, if a person who is an Australian resident is temporarily absent from Australia for a continuous period that does not exceed 26 weeks, the period of temporary absence from Australia shall not be considered as interrupting that person’s residence in Australia.
4. Where a person is receiving a benefit by virtue of this Agreement and that person departs for a third country:
   (a) a New Zealand benefit shall continue to be payable in accordance with the provisions for temporary absences under the social security law of New Zealand if the person was a New Zealand resident at the time he or she departed for the third country; and
   (b) in all other cases a benefit shall continue to be payable for a period of 26 weeks.

5. No New Zealand benefit shall be granted to a person who is in receipt of a benefit under the 1994 Agreement at the time that this Agreement comes into force unless that person ceases to be in receipt of that 1994 Agreement benefit.

ARTICLE 7
Presence in New Zealand

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

2. Where a person is entitled to receive a New Zealand benefit under paragraph 1, the amount payable shall be calculated in accordance with, and subject to the conditions of, the social security law of New Zealand.
ARTICLE 8
Totalisation for New Zealand

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

2. In determining whether a person meets the residential qualifications for an invalid’s benefit, the competent institution of New Zealand shall deem a period as an Australian resident to be a period during which that person was both a New Zealand resident and present in New Zealand.

3. For purposes of paragraphs 1 and 2, where a period of residence in New Zealand and a period of residence in Australia coincide, the period of coincidence shall be taken into account only once as a period of residence in New Zealand.

4. The minimum period of working age residence in New Zealand to be taken into account for the purposes of paragraph 1 shall be 12 months, of which at least 6 months must be continuous.

5. This Article shall not apply to a claimant for New Zealand superannuation or a veteran’s pension who is under the age of 65 years.

ARTICLE 9
Rate of New Zealand Superannuation and Veterans’ Pensions in Australia

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

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

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

(ii) in the case of a married person, the maximum rate of benefit (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) payable under the social security law of New Zealand to a married person whose spouse also qualifies for New Zealand Superannuation or a veteran’s pension in his or her own right;

(c) in no case shall the rate of benefit exceed 100% of the maximum benefit rate as defined in subparagraph (b);

(d) except as provided in paragraph 4, no account shall be taken of any benefit that is payable under the social security laws of Australia; and

(e) no account shall be taken of any benefit that is payable under the legislation of a third country unless paragraph 3 applies.

2. Where a married person, who is entitled to receive New Zealand superannuation or a veteran’s pension, was an Australian resident and in receipt of an invalid’s benefit immediately prior to becoming entitled to receive New Zealand superannuation or a veteran’s pension, that person shall be entitled to receive the rate payable as provided in paragraph 1 to a person with a spouse who does not qualify for New Zealand superannuation or a veteran’s pension in his or her own right.

3. If an Australian resident is not a permanent resident of Australia, periods of working age residence in a third country shall be deemed for the purposes of this Article to be periods of working age residence in New Zealand.

4. Where a person is entitled to receive New Zealand superannuation or a veteran’s pension under Article 6, the rate of New Zealand superannuation or veteran’s pension shall be calculated under paragraph 1 but the amount the person is entitled to receive shall not exceed the amount of Australian age pension that would have been payable to that person if he or she was entitled to receive an Australian age pension but
was not entitled to receive New Zealand superannuation or a veteran’s pension.

ARTICLE 10
Rate of New Zealand Invalid’s Benefit in Australia

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

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

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

(a) all periods of working age residence in New Zealand shall be aggregated;

(b) the maximum benefit rate shall be:

(i) in the case of a single person, the maximum rate of benefit (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) payable under the social security law of New Zealand to a single person; and

(ii) in the case of a married person, the maximum rate of benefit (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) payable under the social security law of New Zealand to a married person;

(c) in no case shall the rate of benefit exceed 100% of the maximum benefit rate as defined in subparagraph (b);

(d) except as provided in paragraph 2, no account shall be taken of any benefit that is payable under the social security law of Australia; and

(e) no account shall be taken of any benefit that is payable under the social security law of a third country if that person is a permanent resident of Australia.
2. The rate of invalid’s benefit that a person who qualifies for an invalid’s benefit under Article 6 shall be calculated under paragraph 1, but the amount the person is entitled to receive, shall not exceed:

(a) in the case of a single person, the amount of Australian disability support pension that would have been payable if that person was entitled to receive an Australian disability support pension but not entitled to receive an invalid’s benefit; or

(b) in the case of a married person, the aggregated amount of Australian disability support payment and carer payment that would have been payable if that person was entitled to an Australian disability support pension and his or her spouse was entitled to a carer payment and that person had not been entitled to receive an invalid’s benefit.

PART III
PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 11
Residence or Presence in New Zealand

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

(a) is an Australian resident or a New Zealand resident; and

(b) is physically present in Australia, or in New Zealand;

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

2. A claimant for an age pension must be at least 65 years of age to be able to obtain the benefit of this Article.

ARTICLE 12
Totalisation for Australia

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

(a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the social security law of Australia for a benefit;
(b) a period of working age residence in Australia equal to or greater than the period identified in accordance with paragraph 3; and
(c) a period of working age residence in New Zealand.

then:
That period of working age residence in New Zealand shall be deemed to be a period in which that person was an Australian resident only for the purposes of meeting any minimum qualifying periods for that benefit set out in the social security law of Australia.

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

3. The minimum period of working age residence in Australia to be taken into account for the purposes of subparagraph 1(b) shall be 12 months, of which at least 6 months must be continuous.

4. No person shall be entitled to claim a disability support pension under this Agreement unless he or she has accumulated an aggregate of more than 10 years of residence in Australia and/or New Zealand.

5. A claimant for an age pension must be at least 65 years of age to be able to obtain the benefit of this Article.

ARTICLE 13
Calculation of Australian Benefits

1. Where an Australian benefit is payable to a person, whether by virtue of the Agreement or otherwise, the rate of that benefit shall be determined under the social security law of Australia but when assessing the income of that person, no New Zealand benefit paid to that person shall be regarded as income.

2. Subject to paragraph 3, where an Australian benefit is payable, by virtue of this Agreement or otherwise, to a person who is in Australia, the rate of that benefit shall be determined by:
(a) calculating that person’s income according to the social security law of Australia but disregarding in that calculation the New Zealand benefit or benefits received by that person;
(b) deducting the amount of the New Zealand benefit or benefits received by that person from the maximum rate of that Australian benefit; and

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

3. Where a member of a couple is, or both that person and his or her partner are, entitled to a New Zealand benefit or benefits, each of them shall be deemed, for the purpose of this Article and for the social security law of Australia, to receive one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

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

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

where,
A = rate payable.
Z = period in months of working age residence in New Zealand.
R = the rate that would have been payable if that person had been in Australia and was qualified under the social security law of Australia to receive age pension.

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

\[
A = \frac{W \times R}{540}
\]

where,
A = rate payable.
W = period in months of working age residence in Australia with a minimum period of 12 months.
R = the rate that would have been payable if that person had been in Australia and was qualified under the social security law of Australia to receive age pension.

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

\[ A = \frac{L \times R}{N + L} \]

where,

A = rate payable.

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

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

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

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

7. For the purposes of:
   (a) paragraph 2, where the pensioner is in Australia, but not a permanent resident;
   (b) subparagraph 4(a); and
   (c) paragraph 5, where the pensioner has less than 10 years in New Zealand,

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

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

PART IV
COMMON PROVISIONS ON ELIGIBILITY

ARTICLE 14
Residence in Third Countries

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

   shall only be entitled to receive a benefit while outside Australia or New Zealand if he or she is entitled to receive that benefit under a reciprocal social security agreement that the Party paying that benefit has entered into with that third country.

2. Where a person, who is in receipt of an Australian benefit by virtue of this Agreement, goes to a third country that benefit shall continue to be payable for 26 weeks.

ARTICLE 15
Payment of Supplementary Benefits and Allowances

1. Where a New Zealand resident becomes entitled to receive a New Zealand benefit under Article 8, the competent institution of New Zealand shall also pay to that person any supplementary benefit or allowance under the social security law of New Zealand for which that person is qualified.

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

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

**ARTICLE 16**

**Residency Issues**

1. Where there is doubt after having applied the definitions in Article 5 as to whether a person is a resident of Australia or New Zealand, the competent institutions of the Parties shall consult on the issue and shall decide in writing the country of residence of that person.

2. Upon the decision being made under paragraph 1, that person shall be deemed to be a resident of that country.

3. If the facts on which a decision was made under paragraph 1 change in regard to the person, the competent institution of a Party may initiate action under paragraph 1 on the basis that there is new doubt as to the residency of the person.

**PART V**

**COMMON PROVISIONS RELATING TO BENEFIT PAYMENTS**

**ARTICLE 17**

**Lodgement of Documents**

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Party in accordance with administrative arrangements made pursuant to Article 21 at any time after the Agreement enters into force.

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

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

**ARTICLE 18**

**Exchange of Information**

1. The competent authorities shall advise each other:
   (a) of laws that amend, supplement or replace the legislation of their respective Parties for the application of this Agreement, promptly after the first-mentioned laws are made;
   (b) directly of internal action to implement this Agreement and any administrative arrangements made for its implementation; and
   (c) of any technical problems encountered when applying the provisions of this Agreement or of any administrative arrangements made for its implementation.

2. The competent institutions shall supply each other with any information in their possession that may assist with verification of the country or countries in which an applicant for benefit to which this Agreement applies has acquired periods of working age residence and each competent institution shall supply that information in the manner specified in the administrative arrangements made pursuant to Article 21.

3. The competent institutions shall communicate to each other, as soon as possible, in relation to each benefit granted by the other Party, all information in its possession required:
   (a) to verify that the person in receipt of that benefit is eligible to receive it under the social security law of the Party granting the benefit;
   (b) to verify the amount of benefit payable; and
   (c) for the recovery of any social security debt under this Agreement.

4. The competent institutions shall, on request, assist each other in relation to the implementation of Agreements on social security entered into by either of the Parties with third countries, to the extent and in the
circumstances specified in the administrative arrangements made pursuant to Article 21.

5. The assistance referred to in paragraphs 2 to 4 shall be provided free of charge except where specified in the administrative arrangements made pursuant to Article 21.

6. Unless disclosure is required and is permitted under the laws of both Parties, any information about an individual that is transmitted in accordance with this Agreement to a competent authority or a competent institution by the competent authority or competent institution of the other Party is confidential and shall be used only for the purposes of implementing this Agreement and the social security law of either Party.

7. Where an exchange of information authorised under this Article is of a kind to which Part X of the *New Zealand Privacy Act 1993* or the *Privacy Act 1988 of Australia* would apply, the administrative arrangements shall:
   (a) include provisions that ensure, in relation to New Zealand, that the safeguards that are required under New Zealand privacy laws in information matching agreements are complied with and that the arrangements are consistent with the information matching rules under New Zealand privacy laws;
   (b) include provisions that ensure, in relation to Australia, that the safeguards that are required under Australian privacy laws in information matching agreements are complied with and that the arrangements are consistent with the information matching rules under Australian privacy laws; and
   (c) list the items of information that each Party may request under this Article.

8. Any information transmitted in accordance with this Agreement to a competent institution shall be protected in the same manner as information obtained under the social security law of the receiving Party.

9. No term in this Article shall affect the obligations of the Parties under Article 25.
ARTICLE 19
Recovery of Overpayments

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

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

2. A reference to a benefit in this Article, in relation to Australia, means a pension, benefit or allowance that is payable under the Acts forming the social security law of Australia as amended from time to time, and in relation to New Zealand means any pension, benefit, allowance or advance made by a competent institution including overpayments which arise because of the payment of Australian and New Zealand benefits.

Recovery from arrears

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

   then:
(i) That other Party shall, if the first-mentioned Party so requests, pay the amount of those arrears to the first-mentioned Party; and

(ii) the first-mentioned Party may deduct from the amount of those arrears any excess amount of the benefit paid by it and shall pay any balance remaining to that person.

**Recovery by instalment or lump sum**

4. Where an amount paid by one of the Parties to a person in respect of a benefit exceeds the amount, if any, that was properly payable, whether by virtue of this Agreement or otherwise, in respect of that benefit, the competent institution of that other Party shall, if requested by the other competent institution to do so, and in accordance with this Article, deduct amounts totalling the excess payment referred to from the regular payments due in respect of the last-mentioned benefit.

5. The amount of an excess payment referred to in paragraph 3 shall be the amount determined by the competent institution of the Party by whom the excess payment was made.

6. The rate of deductions to be made in accordance with paragraph 3 from the amount due in respect of a benefit, and any incidental or related matters, shall be determined by the competent institution of the Party to whom the debt relates, in accordance with the social security law or administrative practice of that Party.

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

**Restitution**

8. The amounts deducted or received by the competent institution of one of the Parties in accordance with paragraphs 3, 4 or 7 shall be remitted to the other competent institution as agreed between the competent institutions or in administrative arrangements made pursuant to Article 21.
ARTICLE 20
Limitations

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

ARTICLE 21
Administrative Arrangements

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

ARTICLE 22
Currency

1. Payments under this Agreement may be made validly in the currency of the Party making the payment.

2. Money transfers made under this Agreement shall be made in accordance with any relevant arrangements in effect between the Parties at the time of transfer.

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

4. A Party that imposes restrictions described in paragraph 3 shall inform the other Party of those restrictions within one calendar month of their imposition and shall adopt the measures described in paragraph 3 within three months of the imposition of those restrictions. If the other Party is not so informed, or if the necessary measures are not adopted within the set time, the other Party may treat such a failure as a material breach of the Agreement and as sufficient justification for termination or suspension of the Agreement between the Parties.

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

ARTICLE 23
Exchange Rates

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

ARTICLE 24
Settlement of Disputes

1. The competent authorities of the Parties shall settle, to the extent possible, any disputes that arise in interpreting or applying the provisions of this Agreement having regard to its spirit and fundamental principles.

2. The Parties shall consult promptly at the request of either concerning matters which have not been settled by the competent authorities in accordance with paragraph 1.

3. Any dispute between the Parties concerning the interpretation or application of the provisions of this Agreement which has not been settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration by an arbitral tribunal.

4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators shall appoint a third who shall act as President provided that if the two arbitrators fail to agree the President of the International Court of Justice shall be requested to appoint the President.

5. The arbitral tribunal shall determine its own procedures.

6. The decision of the arbitral tribunal shall be final and binding.
ARTICLE 25
Review of the Agreement

1. The Parties may agree at any time to review any of the provisions of this Agreement.

2. If a Party wishes to amend, supplement or replace its legislation, in a way that would affect the provisions of this Agreement, it shall, prior to enactment of any such legislation, seek the agreement of the other Party to such amendment of this Agreement, as may be necessary to maintain consistency between that Party’s legislation and the provisions of this Agreement.

3. If a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than six months after that request was made.

ARTICLE 26
Transitional Provisions

1. Subject to this Agreement and to Article 22(3) of the 1994 Agreement, when this Agreement comes into force pursuant to Article 28, the 1994 Agreement shall terminate.

2. Part II, Part III and Part IV of this Agreement shall apply to any person who claims a benefit after 1 July 2002. Any person who, at the date of termination of the 1994 Agreement is in receipt of a benefit under the 1994 Agreement or who has lodged a claim for, and would be entitled to receive a benefit under the 1994 Agreement, shall continue to be entitled to receive that benefit in accordance with the provisions of Part II of the 1994 Agreement, as if the 1994 Agreement remained in force, for so long as that person remains continuously in receipt of a benefit under the 1994 Agreement.

3. A person who is in receipt of a benefit from one Party at the date of termination of the 1994 Agreement shall not be required to claim a benefit from the other Party under this Agreement after that date, whether or not legislation of the first Party obliges him or her to do so.

ARTICLE 27
Reimbursements under the Transitional Provisions

1. Except as provided in paragraph 2, the Government of New Zealand shall continue to reimburse the Government of Australia for benefits for
which it agreed to reimburse the Government of Australia under the 1994 Agreement and which were reimbursable at 1 July 2002 by payment of the following amounts in Australian dollars which will be adjusted annually for movements in the CPI:

(a) in the financial year beginning 1 July 2002, $101.74 million;
(b) in the financial year beginning 1 July 2003, $86.55 million;
(c) in the financial year beginning 1 July 2004, $76.11 million;
(d) in the financial year beginning 1 July 2005, $66.77 million;
(e) in the financial year beginning 1 July 2006, $58.39 million;
(f) in the financial year beginning 1 July 2007, $50.90 million;
(g) in the financial year beginning 1 July 2008, $44.19 million;
(h) in the financial year beginning 1 July 2009, $38.21 million;
(i) in the financial year beginning 1 July 2010, $32.90 million;
(j) in the financial year beginning 1 July 2011, $28.19 million;
(k) in the financial year beginning 1 July 2012, $17.35 million;
(l) in the financial year beginning 1 July 2013, $14.44 million;
(m) in the financial year beginning 1 July 2014, $11.92 million;
(n) in the financial year beginning 1 July 2015, $9.75 million;
(o) in the financial year beginning 1 July 2016, $7.89 million;
(p) in the financial year beginning 1 July 2017, $6.30 million;
(q) in the financial year beginning 1 July 2018, $4.96 million;
(r) in the financial year beginning 1 July 2019, $3.86 million;
(s) in the financial year beginning 1 July 2020, $2.94 million;
(t) in the financial year beginning 1 July 2021, $2.21 million; and
(u) in the financial year beginning 1 July 2022, $1.63 million.

2. In the first financial year that the reimbursable amount, as adjusted for movements in the CPI, is less than 10 million Australian dollars, the Government of New Zealand shall reimburse the Government of Australia that adjusted reimbursable amount for that year together with an amount equal to the aggregate reimbursable amounts for the next 5 financial years (but with no adjustment for movements in the CPI for those 5 financial years) and no further amount shall be reimbursable under this Article.

3. For each financial year the reimbursable amount, or in the financial year referred to in paragraph 2, the total amount payable shall be paid, in
arrears, in equal quarterly instalments on 1 October, 1 January, 1 April of that financial year and 1 July of the next financial year or, if those dates are not banking days, on the first banking day thereafter.

**ARTICLE 28**

**Entry into Force and Termination**

1. The Agreement shall enter into force on 1 July 2002 provided that the Parties have notified each other by notes exchanged through the diplomatic channel that all matters necessary to give effect to this Agreement have been completed; otherwise it shall come into force on the first day of the second month following the date of the last such notification.

2. Subject to paragraph 3, this Agreement shall remain in force until either:
   
   (a) the expiration of 12 months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of either Party to terminate the Agreement; or
   
   (b) the date of entry into force of a later treaty between the Parties relating to the same subject matter as this Agreement, and which the Parties intend shall govern that same subject matter in place of this Agreement.

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

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

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

A/NZ/2/4/2

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

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

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

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

“5. A New Zealand benefit which would otherwise be payable to a person in New Zealand shall continue to be payable for up to 26 weeks after the...
person’s departure from New Zealand if that person departs New Zealand to reside in Australia and:

(a) applies to receive New Zealand superannuation under the Agreement within 26 weeks of arrival in Australia; or

(b) applies to receive an invalid’s benefit under the Agreement within 4 weeks of arrival in Australia.

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

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

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

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

(b) paragraph 2, shall be 12 months residence, of which at least 6 months must be continuous.”

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

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

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

“4. If a person is qualified for a carer payment under this Agreement, that person can receive that payment if that person has an aggregate period of residence of at least 2 years in Australia and/or New Zealand.”
6 Article 12 of the Agreement is amended by deleting paragraph 3, and substituting the following paragraph:

"3. The minimum period of Australian working age residence to be taken into account for the purposes of paragraph 1(b) shall be as follows:

(a) for the purposes of an Australian benefit payable to a person residing outside Australia, the minimum period shall be one year of which at least 6 months must be continuous; but

(b) for the purposes of an Australian benefit payable to an Australian resident, there will be no minimum period."

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

"4. After the entry into force of this Agreement, a claim by a person for a benefit under the social security law of one Party shall be deemed to be a claim for the corresponding benefit under the social security law of the other Party provided that:

(a) if the claimant is applying for an age pension or New Zealand superannuation, he or she is over 65 years of age;

(b) the claimant:
   (i) requests that the claim be considered an application under the social security law of the other Party; or
   (ii) provides information at the time of the application indicating that he or she has completed a period of working age residence in the other country; and

(c) the competent institution receiving the claim forwards the claim for that corresponding benefit to the other competent institution within three months of receiving that claim."

8 Article 18 of the Agreement is amended:

(a) by inserting in paragraph 2, after the word “possession”, the words “or that they are lawfully able to obtain”;

(b) by adding to the end of paragraph 2 the words “The information supplied may include information that identifies any person, including the person’s name, date of birth, sex, passport number, country of citizenship, the date or dates on which the person arrived in or departed from Australia or New Zealand,
and information identifying the aircraft or ship on which he or she arrived or departed, as the case may be."

(c) by inserting in paragraph 3, after the word “possession”, the words “or that it is lawfully able to obtain, that is”;

(d) by inserting in paragraph 5, after the word “provided”, the words “subject to the terms and conditions set out in Part B of the Schedule of this Agreement, and”;

(e) by inserting in paragraph 5, after the words “specified in the”, the words “Schedule or in the”;

(f) by inserting in paragraph 6, after the word “Parties,”, the words “then, except as provided in Part B of the Schedule of this Agreement.”;

(g) by inserting in paragraph 7, after the word “shall”, the words “, in accordance with Part B of the Schedule of this Agreement.”; and

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

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

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

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

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

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

“Schedule

Part A

Terms and conditions for recovery of social security debts

100 Social Security (International Agreements) Act 1999
1 The terms and conditions referred to in Article 19 of the Agreement are:

(a) assistance to recover any social security debt of a party may be provided by the other party only in respect of a debt:

(i) that has been found or determined to be owing in the country concerned by a court or tribunal having jurisdiction in the matter, or by a person, body, or organisation in that country acting administratively within the terms of his, her, or its lawful authorisation; and

(ii) in respect of which any right of review or appeal of the determination of the debt, under the law under which the debt was determined (other than a right of judicial review or complaint under laws relating to administrative decisions generally, or under human rights laws),:

   (A) has been exhausted or has expired; or

   (B) if there is no time limit for the exercise of any such right, has not been exercised, or has been exercised and the review or appeal has been finally determined; and

(iii) that may be lawfully recovered under the laws of that country; and

(iv) that was first found or determined to be owing less than 5 years prior to the date that the request for assistance is made, except as provided in clause 2;

(b) when providing assistance to recover any social security debt of a party, the party giving the assistance is not required to:

(i) give priority to the recovery of social security debts of the other party; and

(ii) take any measures for recovery not provided for under the laws relating to the recovery of debts of that party;

(c) a party may not seek to recover a social security debt by imprisonment of the individual by whom it is owed or of any other individual;

(d) any recovery of a social security debt of a deceased individual is limited to the value of that individual’s estate;

(e) any institution, court, or tribunal involved in the recovery of a social security debt may defer recovery of the debt, or may order or arrange for the debt to be paid in instalments, if:

   (i) the institution, court, or tribunal has the power to do so; and

   (ii) it is its normal practice to do so;

(f) a party may give assistance only in respect of a social security debt that the requesting institution has certified is of a kind described in subparagraphs (i) to (iv) of paragraph (a);

(g) the party requesting assistance to recover a social security debt must pay the costs of the other party of recovering the debt,
including court costs or other fees payable under the laws of that party. For the purposes of this paragraph, “costs of the other party” refer only to costs incurred (such as solicitor’s fees) if court action is taken to recover the debt and do not include the administrative costs of a party.

2 For the purpose of clause 1(a)(ii), a right of review or appeal under the law under which a debt was determined has expired:
   (a) if the right has not been exercised within the time limit provided for its exercise; and
   (b) irrespective of whether the court or tribunal or body or person that would have jurisdiction in respect of the review or appeal, or any other person, retains a discretion (however expressed in that law) to allow the right of review or appeal to be exercised after that time.

3 Where any institution, court, or tribunal defers the recovery of a social security debt, or orders or arranges for a social security debt to be paid by instalments, the 5-year period referred to in clause 1(a)(iv) is extended by the period of deferral or, as the case requires, the period over which the debt is to be paid by instalments.

**Part B**

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

1 The terms and conditions referred to in Article 18 of the Agreement are—
   (a) a request for information relating to an individual may be made only for social security purposes;
   (b) the requested institution of a party may supply to the requesting institution such information on the person to whom the request relates as it holds or is lawfully able to obtain;
   (c) the requesting institution of a party (the “requesting party”) to whom information is supplied by the requested institution of the other party may supply that information to the taxation authorities of the requesting party for either or both of the following purposes:
      (i) making an assessment of the tax due by any person under the laws of the requesting party relating to taxation;
      (ii) detecting tax fraud or tax evasion under the laws of the requesting party;
(d) every request for and supply of information made by and to the competent institutions of the parties must be made in terms of an agreement between the competent institutions of the parties that:

(i) specifies the types of information that the competent institutions may supply to each other; and

(ii) limits the supply of information to the types of information specified; and

(iii) subject to subparagraph (iv), in relation to New Zealand, contains, with all necessary modifications, the safeguards required to be set out in an information matching agreement within the meaning of section 99 of the Privacy Act 1993; and

(iv) in relation to New Zealand, requires the information matching rules set out in clause 4 of the Schedule 4 of the Privacy Act 1993, with all necessary modifications, to be applied; and

(v) in relation to New Zealand, has been agreed to by the Privacy Commissioner under the Privacy Act 1993, the Commissioner having had regard to the information matching guidelines in section 98 of that Act;

(e) subject to paragraphs (b) and (c), any information supplied by a party to the other party must be subject to the same privacy protections as any other personal information obtained under the social security laws of the other party;

(f) no party that receives, under the Agreement, personal information about any individual from the competent institution of the other party may supply that information to any other country without the prior written consent of that competent institution or the individual concerned;

(g) a party must supply the competent institution of the other party with any information required by that institution to answer any questions or to make any report or return required by a person or body authorised to monitor compliance with that party’s privacy laws.

2 In relation to New Zealand, section 99(4) of the Privacy Act 1993 applies, with any necessary modifications, to an agreement between the competent institutions of the parties under clause 1(d).”

The New Zealand High Commission has the honour to propose that, if the foregoing is acceptable to the Government of Australia, this note, and the Department’s note in reply, shall together constitute an Exchange of Notes Amending the Agreement, which shall enter into force on the date on which the Agreement enters into force.
The New Zealand High Commission avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade of Australia the assurances of its highest consideration.

New Zealand High Commission
CANBERRA
20 February 2002

Australian note in reply
LGB 02/22

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

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

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

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

Social Security (International Agreements) Act 1999
2 Article 6 of the Agreement is amended by renumbering paragraph 5 as paragraph 7, and by inserting new paragraphs 5 and 6 as follows:

“5. A New Zealand benefit which would otherwise be payable to a person in New Zealand shall continue to be payable for up to 26 weeks after the person’s departure from New Zealand if that person departs New Zealand to reside in Australia and:

(a) applies to receive New Zealand superannuation under the Agreement within 26 weeks of arrival in Australia; or

(b) applies to receive an invalid’s benefit under the Agreement within 4 weeks of arrival in Australia.

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

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

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

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

(b) paragraph 2, shall be 12 months residence, of which at least 6 months must be continuous.”

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

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

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

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

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

“3. The minimum period of Australian working age residence to be taken into account for the purposes of paragraph 1(b) shall be as follows:

(a) for the purposes of an Australian benefit payable to a person residing outside Australia, the minimum period shall be one year of which at least 6 months must be continuous; but

(b) for the purposes of an Australian benefit payable to an Australian resident, there will be no minimum period.”

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

“4. After the entry into force of this Agreement, a claim by a person for a benefit under the social security law of one Party shall be deemed to be a claim for the corresponding benefit under the social security law of the other Party provided that:

(a) if the claimant is applying for an age pension or New Zealand superannuation, he or she is over 65 years of age;

(b) the claimant:
(i) requests that the claim be considered an application under the social security law of the other Party; or
(ii) provides information at the time of the application indicating that he or she has completed a period of working age residence in the other country; and

(c) the competent institution receiving the claim forwards the claim for that corresponding benefit to the other competent institution within three months of receiving that claim.”

8 Article 18 of the Agreement is amended:

106 Social Security (International Agreements) Act 1999
(a) by inserting in paragraph 2, after the word “possession”, the words “or that they are lawfully able to obtain”;

(b) by adding to the end of paragraph 2 the words “The information supplied may include information that identifies any person, including the person’s name, date of birth, sex, passport number, country of citizenship, the date or dates on which the person arrived in or departed from Australia or New Zealand, and information identifying the aircraft or ship on which he or she arrived or departed, as the case may be.”;

(c) by inserting in paragraph 3, after the word “possession”, the words “or that it is lawfully able to obtain, that is”;

(d) by inserting in paragraph 5, after the word “provided”, the words “subject to the terms and conditions set out in Part B of the Schedule of this Agreement, and”;

(e) by inserting in paragraph 5, after the words “specified in”, the words “the Schedule or in the”;

(f) by inserting in paragraph 6, after the word “Parties,”, the words “then, except as provided in Part B of the Schedule of this Agreement.”;

(g) by inserting in paragraph 7, after the word “shall”, the words “, in accordance with Part B of the Schedule of this Agreement,”;

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

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

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

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

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

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

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Social Security (International Agreements) Act 1999 107
“Schedule

Part A

Terms and conditions for recovery of social security debts

1 The terms and conditions referred to in Article 19 of the Agreement are:

(a) assistance to recover any social security debt of a party may be provided by the other party only in respect of a debt:

(i) that has been found or determined to be owing in the country concerned by a court or tribunal having jurisdiction in the matter, or by a person, body, or organisation in that country acting administratively within the terms of his, her, or its lawful authorisation; and

(ii) in respect of which any right of review or appeal of the determination of the debt, under the law under which the debt was determined (other than a right of judicial review or complaint under laws relating to administrative decisions generally, or under human rights laws):  

(A) has been exhausted or has expired; or

(B) if there is no time limit for the exercise of any such right, has not been exercised, or has been exercised and the review or appeal has been finally determined; and

(iii) that may be lawfully recovered under the laws of that country; and

(iv) that was first found or determined to be owing less than 5 years prior to the date that the request for assistance is made, except as provided in clause 2;

(b) when providing assistance to recover any social security debt of a party, the party giving the assistance is not required to:

(i) give priority to the recovery of social security debts of the other party; and

(ii) take any measures for recovery not provided for under the laws relating to the recovery of debts of that party;

(c) a party may not seek to recover a social security debt by imprisonment of the individual by whom it is owed or of any other individual;

(d) any recovery of a social security debt of a deceased individual is limited to the value of that individual’s estate;

(e) any institution, court, or tribunal involved in the recovery of a social security debt may defer recovery of the debt, or may order or arrange for the debt to be paid in instalments, if:
(i) the institution, court, or tribunal has the power to do so; and
(ii) it is its normal practice to do so;

(f) a party may give assistance only in respect of a social security debt that the requesting institution has certified is of a kind described in subparagraphs (i) to (iv) of paragraph (a);

(g) the party requesting assistance to recover a social security debt must pay the costs of the other party of recovering the debt, including court costs or other fees payable under the laws of that party. For the purposes of this paragraph, “costs of the other party” refer only to costs incurred (such as solicitor’s fees) if court action is taken to recover the debt and do not include the administrative costs of a party.

2 For the purpose of clause 1 (a) (ii), a right of review or appeal under the law under which a debt was determined has expired:
(a) if the right has not been exercised within the time limit provided for its exercise; and
(b) irrespective of whether the court or tribunal or body or person that would have jurisdiction in respect of the review or appeal, or any other person, retains a discretion (however expressed in that law) to allow the right of review or appeal to be exercised after that time.

3 Where any institution, court, or tribunal defers the recovery of a social security debt, or orders or arranges for a social security debt to be paid by instalments, the 5-year period referred to in clause 1(a)(iv) is extended by the period of deferral or, as the case requires, the period over which the debt is to be paid by instalments.

**Part B**

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

1 The terms and conditions referred to in Article 18 of the Agreement are—
(a) a request for information relating to an individual may be made only for social security purposes;
(b) the requested institution of a party may supply to the requesting institution such information on the person to whom the request relates as it holds or is lawfully able to obtain;
(c) the requesting institution of a party (the “requesting party”) to whom information is supplied by the requested institution of the other party may supply that information to the taxation authorities of the requesting party for either or both of the following purposes:
(i) making an assessment of the tax due by any person under the laws of the requesting party relating to taxation;
(ii) detecting tax fraud or tax evasion under the laws of the requesting party;

(d) every request for and supply of information made by and to the competent institutions of the parties must be made in terms of an agreement between the competent institutions of the parties that:
(i) specifies the types of information that the competent institutions may supply to each other; and
(ii) limits the supply of information to the types of information specified; and
(iii) subject to subparagraph (iv), in relation to New Zealand, contains, with all necessary modifications, the safeguards required to be set out in an information matching agreement within the meaning of section 99 of the Privacy Act 1993; and
(iv) in relation to New Zealand, requires the information matching rules set out in clause 4 of the Schedule 4 of the Privacy Act 1993, with all necessary modifications, to be applied; and
(v) in relation to New Zealand, has been agreed to by the Privacy Commissioner under the Privacy Act 1993, the Commissioner having had regard to the information matching guidelines in section 98 of that Act;

(e) subject to paragraphs (b) and (c), any information supplied by a party to the other party must be subject to the same privacy protections as any other personal information obtained under the social security laws of the other party;

(f) no party that receives, under the Agreement, personal information about any individual from the competent institution of the other party may supply that information to any other country without the prior written consent of that competent institution or the individual concerned;

(g) a party must supply the competent institution of the other party with any information required by that institution to answer any questions or to make any report or return required by a person or body authorised to monitor compliance with that party’s privacy laws.

2 In relation to New Zealand, section 99 (4) of the Privacy Act 1993 applies, with any necessary modifications, to an agreement between the competent institutions of the parties under clause 1(d).”
The New Zealand High Commission has the honour to propose that, if the foregoing is acceptable to the Government of Australia, this note, and the Department’s note in reply, shall together constitute an Exchange of Notes Amending the Agreement, which shall enter into force on the date on which the Agreement enters into force.

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

New Zealand High Commission

CANBERRA

The Department of Foreign Affairs and Trade of Australia has the honour to advise that the foregoing is acceptable to the Government of Australia and that, accordingly, the High Commission’s note and this note in reply shall together constitute an Exchange of Notes Amending the Agreement on Social Security between the Government of Australia and the Government of New Zealand, done at Canberra on 28 March 2001, which shall enter into force the date on which the Agreement enters into force.

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

CANBERRA

21 February 2002
AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF CANADA

THE GOVERNMENT OF AUSTRALIA AND
THE GOVERNMENT OF CANADA,

WISHING to strengthen the existing friendly relations between the two countries,
NOTING the Reciprocal Agreement on Social Security signed on the fourth day of July 1988, as amended by a Protocol signed the eleventh day of October 1990, and
ACKNOWLEDGING the need to reflect, by means of a consolidated document, the changes which have taken place in their respective legislation since that Agreement and Protocol were signed,

HAVE AGREED AS FOLLOWS:

PART 1 – INTERPRETATION AND SCOPE

ARTICLE 1

Interpretation

1. In this Agreement:
   ‘benefit’ means, in relation to a Party, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that benefit, pension or allowance, to or in respect of a

Social Security (International Agreements) Act 1999
person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

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

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

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

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

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

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

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

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

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

“social security laws” means:

(i) in relation to Australia, the Acts forming the social security law, including regulations made thereunder, as amended; and

(ii) in relation to Canada, the laws specified in subparagraph 1 (b) of Article 2;

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

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

ARTICLE 2

Legislative Scope

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

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

Social Security (International Agreements) Act 1999
(i) age pensions;
(ii) disability support pensions;
(iii) carer payments;
(iv) pensions payable to widowed persons; and
(v) additional child amount payable to persons in receipt of the above benefits; and

(b) in relation to Canada:
   (i) the *Old Age Security Act* and the regulations made thereunder; and
   (ii) the *Canada Pension Plan* and the regulations made thereunder.

2. In relation to Australia, the legislation to which this Agreement applies shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security.

3. This Agreement shall apply to laws of a Party which extend the existing legislation of that Party to new categories of beneficiaries unless the competent authority of that Party communicates in writing an objection in regard to those laws to the competent authority of the other Party within 60 days of the date on which those laws receive Royal Assent.

4. Where, under the legislation of Australia, a new category of beneficiaries has arisen as described in paragraph 3, no qualification for benefits in that category shall exist until the expiration of the period set out in that paragraph.
ARTICLE 3  
_Personal Scope_

This Agreement shall apply to any person who:

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

(b) is residing or has resided in Canada within the meaning of the _Old Age Security Act_ or is making or has made contributions pursuant to the _Canada Pension Plan_

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

ARTICLE 4  
_Equality of Treatment_

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

PART II – PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 5  
_Residence or Presence in Canada or a Third State_

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

(a) is an Australian resident or residing in Canada or a third State with which Australia has concluded an agreement on social security that includes provision for
co-operation in the assessment and determination of claims for benefits; and
(b) is in Australia, Canada or that third State
that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.
2. Paragraph 1 shall not apply to a claimant for a benefit who has never been an Australian resident.

ARTICLE 6
Totalisation for Australian Benefits
1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:
(a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, for a benefit under the legislation of Australia; and
(b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 6 for that person,
and has accumulated a Canadian creditable period, then for the purposes of a claim for that Australian benefit, that Canadian creditable period shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia, to be a period in which that person was an Australian resident.
2. In the case of a claim by a person for a disability support pension or pension payable to a widowed person, paragraph 1 shall apply only to a Canadian creditable period accumulated by that person under the Canada Pension Plan.
3. For the purposes of a claim by a person for a pension payable to a widowed person, that person shall be deemed to have accumulated a Canadian creditable period for any period for which the person’s partner accumulated a creditable period under the Canada Pension Plan but any period during which the person and the partner both accumulated Canadian creditable periods under the Canada Pension Plan shall be taken into account once only.

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

5. For the purposes of this Article:
   (a) where a period of Australian working life residence and a Canadian creditable period coincide, the period of coincidence shall be taken into account once only as a period in which that person was an Australian resident; and
   (b) a Canadian creditable period accumulated under the Old Age Security Act which coincides with a Canadian creditable period accumulated under the Canada Pension Plan shall be taken into account once only.
6. The minimum period to be taken into account for the purposes of subparagraph 1(b) shall be, for a person who is residing outside Australia, a minimum period of Australian working life residence of one year, of which at least 6 months must be continuous and for an Australian resident, no minimum shall apply.

ARTICLE 7
Calculation of Australian Benefits

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

(a) disregarding in the calculation of his or her income:
   (i) the guaranteed income supplement under the Old Age Security Act;
   (ii) the portion of the allowance under that Act equivalent to the guaranteed income supplement; and
   (iii) other Canadian federal, provincial or territorial welfare payments of a similar character which are income or means tested, as mutually agreed by the competent authorities; and

(b) by assessing as income of that person and, where applicable that person’s partner, only a proportion of any other benefit received by that person and, where applicable that person’s partner, under the legislation of Canada calculated by multiplying the number of whole months, plus one, accumulated by that person in a period of Australian working life residence, but not
exceeding 300, by the amount of that benefit and dividing that product by 300.

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

3. Where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:
   (a) calculating that person’s income according to the Australian legislation but disregarding in that calculation any Canadian benefit to which the person or the person’s partner is entitled;
   (b) deducting that Canadian benefit from the maximum rate of that Australian benefit; and
   (c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the Australian legislation, using as the person’s income the amount calculated under subparagraph (a).

4. Where the rate of a benefit calculated in accordance with paragraph 3 is less than the rate of that benefit which would be payable under paragraph 1 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.

5. For the purposes of paragraph 4, a comparison of the rates of a benefit determined in accordance with paragraphs 1, 2 and 3 shall be made as at:

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120 Social Security (International Agreements) Act 1999
(a) the date of the first pension pay-day occurring after the date on which the claim for the benefit was lodged; and

(b) each anniversary of that pension pay-day for so long as the person concerned is entitled to the benefit, using, in that comparison, the number of months in the period of Australian working life residence accumulated by the person at the date as at which the comparison is made.

6. For the purposes of paragraph 3, where one or the other, or both, of a person and his or her partner are entitled to receive a Canadian benefit, the total of the Canadian benefits payable to that person and his or her partner shall be apportioned equally between them and disregarded in the calculation of their respective incomes, and the amount so apportioned shall be deducted from the amount of Australian benefit that would otherwise be payable to each of them.

ARTICLE 8
Recovery of Debts

1. Where:

(a) the competent authority of Canada pays a benefit to a person in respect of a past period;

(b) for all or part of that period, the competent institution of Australia has paid to that person a benefit under the legislation of Australia; and

(c) the amount of the Australian benefit would have been varied had the Canadian benefit been paid during that period, then
(d) the amount that would not have been paid by the competent institution of Australia had the Canadian benefit been paid on a periodical basis from the date to which the arrears of benefit referred to in subparagraph (a) were paid shall be a debt due by that person to Australia; and

(e) the competent institution of Australia may determine that the amount, or any part, of that debt may be deducted from future payments of a benefit to that person.

2. In paragraph 1, “benefit” means, in relation to Australia, a pension, benefit or allowance that is payable under the social security laws of Australia.

PART III – PROVISIONS RELATING TO CANADIAN BENEFITS

ARTICLE 9
Totalisation for Canadian Benefits

1. Subject to paragraph 3, if a person is not eligible for a benefit on the basis of his or her Canadian creditable periods, eligibility of that person for that benefit shall be determined by totalising these periods and those specified in paragraph 2.

2. (a) For the purposes of determining eligibility for a benefit under the Old Age Security Act, a period of Australian working life residence shall be considered as a period of residence in Canada.

(b) For the purposes of determining eligibility for a benefit under the Canada Pension Plan, a calendar year which includes a period of Australian working life residence of at least 6
calendar months shall be considered as a year for which contributions have been made under the Canada Pension Plan.

3. For the purposes of this Article, where a Canadian creditable period and a period of Australian working life residence coincide, the period of coincidence shall be taken into account once only as a Canadian creditable period.

ARTICLE 10
Benefits under the Old Age Security Act

1. If a person is eligible for a pension or an allowance solely through the application of the totalising provisions of Article 9, the competent institution of Canada shall calculate the amount of the pension or allowance payable to that person in conformity with the provisions of the Old Age Security Act governing the payment of a partial pension or allowance, exclusively on the basis of the periods of residence in Canada which may be considered under that Act.

2. Paragraph 1 shall also apply to a person outside Canada who would be entitled to the payment of a full pension in Canada but who has not resided in Canada for the minimum period required by the Old Age Security Act for entitlement to payment of a pension outside Canada.

3. Notwithstanding any other provision of this Agreement:
   (a) the competent authority of Canada shall not pay a pension under the Old Age Security Act to a person outside Canada unless his or her Canadian creditable period accumulated under that Act and period of Australian working life residence, when totalised as provided in Article 9, are at least equal to the
minimum period of residence in Canada required by the *Old Age Security Act* for payment of a pension outside Canada; and

(b) an allowance and a guaranteed income supplement shall be paid to a person who is outside Canada only to the extent permitted by the *Old Age Security Act*.

**ARTICLE 11**

*Benefits under the Canada Pension Plan*

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

2. The amount of the flat-rate portion of the benefit payable by virtue of this Agreement shall, in a case referred to in paragraph 1, be determined by multiplying:

(a) the amount of the flat-rate portion of the benefit determined under the *Canada Pension Plan*

by

(b) the fraction which represents the ratio of the periods of contributions to the *Canada Pension Plan* in relation to the minimum qualifying period required under the *Canada Pension Plan* for eligibility to that benefit,

but in no case shall that fraction exceed the value of one.
PART IV – MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 12
Lodgement of Documents

1. The date on which a claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Party is lodged with the competent authority or competent institution of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of that document with the competent authority or competent institution of the first Party.

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

ARTICLE 13
Export of Benefits

1. Unless otherwise provided in this Agreement, the benefits payable to a person under the legislation of one Party shall also be payable to that person when he or she is in the territory of the other Party.

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

3. Where qualification for an Australian benefit is subject to limitations as to time, reference to Australia in those limitations shall be read also as references to Canada.
4. The rights under this Article shall not apply to any rent assistance, pharmaceutical allowance or telephone allowance paid by Australia.

5. A benefit payable by a Party by virtue of this Agreement or under its legislation shall be paid by that Party without deduction of administrative fees and charges by the government or the corresponding competent authority or competent institution for processing and paying that benefit, whether the person qualifying for the benefit is in the territory of the other Party or in a third State.

6. If a person is receiving a carer payment under this Agreement, references to Australia in the provisions relating to qualification and payability of carer payment shall also be read as references to Canada.

ARTICLE 14

Exchange of Information and Mutual Assistance

1. The competent authorities and competent institutions shall:

   (a) notify each other of laws affecting the application of this Agreement that amend, supplement or replace the social security laws of their respective Parties promptly after the former laws are made;

   (b) unless prohibited by law, communicate to each other any information necessary for the application of this Agreement or of the respective social security laws of the Parties concerning all matters arising under this Agreement or under those laws;

   (c) lend their good offices and furnish assistance to one another with regard to the determination or payment of any benefit under this Agreement or any other entitlement under the
respective social security laws as if the matter involved the application of their own laws; and

(d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 15.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the competent authorities and/or competent institutions for the reimbursement of certain types of expenses.

3. Any information about a person which is transmitted in accordance with this Agreement to a competent authority or competent institution shall be protected in the same manner as information obtained under the social security laws of that Party and shall be disclosed only in the manner permitted by the laws of that Party.

4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the competent authority or competent institution of a Party the obligation:

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

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administrative practice of that or the other Party.
ARTICLE 15
Administrative Arrangements
The competent authorities of the Parties shall make whatever administrative arrangements are necessary from time to time to implement this Agreement.

ARTICLE 16
Language of Communication
In the application of this Agreement, the competent authority or competent institution of a Party may communicate directly with the other competent authority or competent institution in any official language of that Party.

ARTICLE 17
Understandings with a Province of Canada
1. The relevant authority of Australia and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada provided that those understandings are not inconsistent with the provisions of this Agreement.
2. If the relevant authority of Australia and a province of Canada conclude such an understanding, then any references in the legislation of Australia to a scheduled international agreement with a foreign country shall be read also as references to a scheduled instrument of understanding between Australia and a province of Canada.

ARTICLE 18
Resolution of Disputes
1. The competent authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
2. The Parties shall consult promptly at the request of either concerning matters which have not been resolved by the competent authorities in accordance with paragraph 1.

3. Any dispute between the Parties concerning the interpretation of this Agreement which has not been resolved or settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration.

4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators so appointed shall appoint a third who shall act as president; provided that if the two arbitrators fail to agree, the President of the International Court of Justice shall be requested to appoint the president.

5. The arbitrators shall determine their own procedures.

6. The decision of the arbitrators shall be final and binding.

ARTICLE 19

Review of Agreement

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

ARTICLE 20

Transitional Provisions

1. Subject to this Agreement, in determining the eligibility of a person for a benefit payable by virtue of this Agreement:
   (a) a period as an Australian resident and/or a Canadian creditable period; and
   (b) any event or fact which is relevant to that eligibility shall be taken into account in so far as those periods or those events are applicable in regard to that person, no matter when they were accumulated or occurred.

2. Subject to paragraphs 4 and 6, the start date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but shall never be earlier than the date on which this Agreement enters into force.

3. Subject to this Agreement, when this Agreement comes into force, the previous agreement shall terminate and persons who were receiving benefits by virtue of that agreement shall receive those benefits by virtue of this Agreement.

4. When a person, due to the operation of paragraph 3 of this Article, receives a carer payment in Australia by virtue of this Agreement, the rate of that carer payment shall be determined according to the legislation of Australia.

5. Where, on the date on which this Agreement enters into force, a person:
   (a) is in receipt of a benefit under the legislation of either Party by virtue of the previous agreement; or
(b) is qualified to receive a benefit referred to in subparagraph (a) and, where a claim for that benefit is required, has claimed that benefit, no provision of this Agreement shall affect that person’s qualification to receive that benefit.

6. An Australian benefit that is payable only by virtue of the previous agreement to a person who:
   (a) was an Australian resident on 8 May 1985; and
   (b) commenced to receive that benefit before 1 January 1996 shall be paid, during any absence of that person from Australia that commenced before 1 January 1996, at a rate calculated in accordance with paragraphs 3 and 4 of Article 7 of this Agreement.

7. Where, after the entry into force of this Agreement, a person:
   (a) applies for a benefit under the legislation of Canada; and
   (b) would have been eligible for that benefit under the provisions of the previous agreement, with a commencement date determined in accordance with the legislation of Canada which is prior to the date of entry into force of this Agreement, the competent institution of Canada shall pay that benefit to that person with effect from that commencement date. This shall also be the case in regard to an application for a benefit which is received prior to the entry into force of this Agreement but on which the competent institution of Canada has not yet taken a decision when this Agreement enters into force.
8. A death benefit under the Canada Pension Plan shall not be paid by virtue of this Agreement in respect of a death which occurred before the date of entry into force of the previous agreement.

ARTICLE 21
Period of Duration and Termination
1. Subject to paragraph 2, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of the other Party to terminate this Agreement.

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

ARTICLE 22
Entry Into Force
This Agreement shall enter into force on a date specified in notes exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Agreement have been finalised.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.
DONE in two copies at Ottawa this 26th day of July 2001 in the English and French languages, each text being equally authoritative.

FOR THE GOVERNMENT
OF AUSTRALIA
Frances Lisson
[Signatures omitted]

FOR THE GOVERNMENT
OF CANADA
Paul Migus
[Signatures omitted]
AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA AND SPAIN

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

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

Have agreed as follows:

PART I—GENERAL PROVISIONS

ARTICLE 1

Definitions

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

   “benefit” means in relation to a Party, a benefit for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that benefit, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

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

   “Competent Authority” means; in relation to Australia: the Secretary to the Department of Social Security; and, in relation to Spain: the Department of Labour and Social Security;

   “Competent Institution” means; in relation to Australia: the Competent Authority for Australia; and in relation to Spain: the Institution responsible under the legislation of Spain for dealing with a claim for a Spanish benefit;
“Institution” means; in relation to Australia: the Competent Authority for Australia; and in relation to Spain: the agency or authority responsible for the implementation of the legislation of Spain;

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

“period of residence in Australia”, 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 8 to be a period in which that person was an Australian resident;

“Spanish creditable period” means a period, or the total of two or more periods, of contributions which has been or can be used to acquire the right to a Spanish benefit, but does not include any period considered under paragraph 1 of Article 10 as a Spanish creditable period;

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

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

ARTICLE 2

Legislative Scope

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

(a) in relation to Australia: the Social Security Act 1947 in so far as the Act provides for and in relation to the following benefits:

(i) age pensions;
(ii) invalid pensions;
(iii) wives’ pensions;
Schedule 5  Spain

(iv) carer’s pensions; and
(v) pensions payable to widows,

(b) in relation to Spain: the legislation relating to the General Scheme and the Special Schemes of the Social Security system as they relate to the following benefits:

(i) benefits for temporary incapacity for work in cases of common illness, maternity or non-industrial accident;
(ii) invalidity;
(iii) old age;
(iv) death and survivors; and
(v) unemployment benefits.

2. Notwithstanding the provisions of paragraph 1 the legislation of Australia shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any reciprocal agreement on social security entered into by either Party.

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

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

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

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

ARTICLE 4

Equality of Treatment

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

ARTICLE 5

Application of Spanish Legislation

1. Where an employee or a self-employed worker who is covered by the Social Security Schemes of Spain is sent by his firm, or goes, to undertake temporary work in Australia he or she shall continue to be covered by those Social Security Schemes so long as the period of the proposed work does not exceed 5 years.

2. If, owing to unforeseen circumstances, the period of the work extends beyond 5 years, this extension may be recognised by the Competent Authority of Spain.

PART II—PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 6

Residence or Presence in Spain or a Third State

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

   (a) is an Australian resident or residing in Spain 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, Spain 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 wife’s pension or carer’s pension who has never been an Australian resident.
ARTICLE 7

Spouse-related Australian Benefits

For the purposes of this Agreement, a person who receives an Australian benefit due to the fact that the spouse 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 8

Totalisation for Australia

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

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

(b) a period of residence in Australia equal to or greater than the minimum period identified in accordance with paragraph 4 for that person;

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

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

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

(b) has accumulated a Spanish creditable period in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a),

the total of the Spanish creditable periods shall be deemed to be one continuous period.
3. For all purposes of this Article, where a period by a person as an Australian resident and a Spanish creditable period accumulated by that person coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

4. The minimum period of residence in Australia to be taken into account for the purposes of paragraph 1 shall be as follows:

   (a) for the purposes of an Australian benefit that is payable to a person residing outside Australia, the minimum period required shall be one year, of which at least six months must be continuous; and

   (b) for the purposes of an Australian benefit that is payable to an Australian resident there shall be no minimum period of residence in Australia.

**ARTICLE 9**

Calculation of Australian Benefits

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

2. Notwithstanding the provisions of the previous paragraph, when assessing the income of a person for the purposes of calculating the rate of benefit only a proportion of any Spanish benefit (or benefits) shall be regarded as income.

   That proportion shall be calculated by multiplying the total number of months of that person’s period of residence in Australia, which shall not exceed 300, by the amount of that Spanish benefit and dividing that product by 300.

3. A person who is in receipt of an Australian benefit under the legislation of Australia, shall be entitled to the concessional assessment of income set out in paragraph 2 of this Article for any period during which the rate of that person’s Australian benefit is proportionalised under the legislation of Australia.
4. Where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia and until the person becomes eligible under Australian domestic legislation the amount of that benefit shall be determined as follows:

(a) according to the legislation of Australia, but without taking into account in the computation of his or her income any Spanish benefit which that person is entitled to receive, and

(b) by deducting the amount of that Spanish benefit from the amount of the Australian benefit to which that person would otherwise be entitled.

5. Where a married person, or that person and his or her spouse are in receipt of a Spanish benefit or benefits, it shall be deemed, for the purposes of implementing paragraph 4 and the legislation of Australia, that each one of them receives one half of the amount of the benefit or the total of the two benefits as the case may be.

6. If a person is unable to receive an Australian benefit as a result of the provisions of paragraph 4, or because the person did not claim the said benefit, it shall be deemed that if that person’s spouse claims a benefit under the legislation of Australia, that the person receives that benefit.

7. The reference in paragraph 6 to payment of a benefit under the legislation of Australia to the spouse, means the payment of any benefit, pension or allowance payable under the Social Security Act 1947 as amended from time to time and whether payable by virtue of this Agreement or otherwise.

PART III—PROVISIONS RELATING TO SPANISH BENEFITS

ARTICLE 10

Totalization for Spain

1. Where this Agreement applies and there is a Spanish creditable period that is:

(a) less than the period necessary to give a claimant entitlement to the benefit claimed under Spanish legislation; and
(b) equal to or greater than the minimum period mentioned in paragraph 3 for that benefit,

then any period of residence in Australia by the contributor to whom that Spanish creditable period was credited shall be deemed to be a Spanish creditable period.

2. For the purposes of this Article, where a Spanish creditable period and period of residence in Australia coincide, the period of coincidence shall be taken into account once only as a Spanish creditable period.

3. The minimum Spanish creditable period to be taken into consideration for the purposes of paragraph 1 shall be one year. However, where the Spanish creditable period is shorter than one year and the period of residence in Australia is also shorter than one year, but with the addition of both periods an entitlement to a Spanish benefit is obtained, they shall both be taken into account.

4. For the purposes of this Article the upper age limit for a woman, set in the definition of a period of residence in Australia in the legislation of Australia shall be raised from 60 years to 65 years for the purposes of claiming an old age pension under the legislation of Spain.

ARTICLE 11

Sickness Benefits

For the granting of benefits in case of sickness of a worker the totalization of periods referred to in Article 10 shall be taken into account, if necessary, without the condition imposed by subparagraph 1(b) of Article 10.

ARTICLE 12

Old age, invalidity and survivors pensions

1. Entitlement by virtue of this Agreement to old age, invalidity or death and survivors benefit under the legislation of Spain shall be determined as follows:
the Competent Institution shall determine, according to its own provisions, the amount of the benefit corresponding to the duration of the periods of insurance completed only under its legislation.

(b) The Competent Institution shall also examine the entitlement considering the provisions of Article 10. If, in application of it, entitlement to pension is obtained, the following rules shall apply for the calculation of the amount:

(i) the Competent Institution shall determine the theoretical pension to which the claimant would be entitled as if all the periods of insurance and/or residence totalized had been accomplished under its legislation;

(ii) the amount of the pension effectively due to the claimant, shall be that obtained after reducing the amount of the theoretical pension to a pro-rata pension, according to the period of insurance completed exclusively under the legislation of Spain and all the periods of insurance and residence completed in the two Parties; and

(iii) in no case shall the sum of the Spanish creditable periods and the periods of residence in Australia be taken to exceed the maximum period established by the legislation of Spain in regard to the benefit in question.

2. Once the entitlement of the claimant has been established according to subparagraphs 1(a) and (b) the Competent Institution shall assign the most favourable benefit.

ARTICLE 13

Special Scheme Benefits

If the legislation of Spain provides that in the determination of entitlement to or the granting of certain benefits there is a requirement that the Spanish creditable periods have been completed in an activity subject to a Special Scheme or, as the case may be, in a specific activity or specific employment, periods of residence in Australia completed under the legislation of Australia shall be taken into account when they have been accomplished in an equivalent scheme or in the same activity or in the same employment.
ARTICLE 14

Determination of Regulating Base

When, for determining the Regulating Base for benefits, periods of residence in Australia must be taken into account, the Spanish Competent Institution shall determine that Regulating Base on the minimum contribution bases in force in Spain, during that period or fraction of period, for the workers of the same category of professional qualification as the person concerned last had according to Spanish legislation.

ARTICLE 15

Situacion de alta

An Australian resident or a person in receipt of an Australian benefit shall be deemed to be validly insured (situacion de alta o asimilada) for the purposes of entitlement to benefit under the legislation of Spain.

ARTICLE 16

Unemployment Benefits

1. For the granting of unemployment benefits the totalization of periods referred to in Article 10 shall, if necessary, be taken into account without the condition imposed by subparagraph 1(b) of that Article.

2. Notwithstanding the provisions of Article 20, unemployment benefits paid pursuant to paragraph 1 shall be paid during the periods established under the legislation of Spain and while the unemployed person resides in the territory of Spain.
ARTICLE 17

Equivalence of Events

The continuing entitlement to a Spanish benefit shall be subject to the legislation of Spain and events which occur in Australia relevant to that continuing entitlement will be considered as if they had occurred in Spain.
PART IV—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 18

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of either of the Parties in accordance with administrative arrangements made pursuant to Article 22 at any time after the Agreement enters into force.

2. The date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of that document with the Competent Institution of the first Party.

3. In relation to Australia, the reference in paragraph 2 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia.

ARTICLE 19

Determination of Claims

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

   (a) a period as an Australian resident and a Spanish creditable period; and
   (b) any event or fact which is relevant to that entitlement,

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

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation

Social Security (International Agreements) Act 1999
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. (a) Where a person receives or will receive a benefit from one Party and has received an overpayment of a benefit from the other Party, the Institution of the latter Party may request the Institution of the former Party to withhold the amount of the overpayment from the arrears of benefits payable by the former Party and transfer them to the Institution of the latter Party to recoup the amount of the overpayment.

(b) The Institution receiving a request under subparagraph (a) shall take the action set out in the Administrative Arrangement, as provided for in Article 22, to recoup the amount of the overpayment and to transfer it to the other Institution.

(c) The amount of the overpayment shall be a debt due by the person receiving it to the Party that paid it.

4. A reference in paragraph 3 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the Social Security Act 1947 of Australia as amended from time to time, and in relation to Spain, means any pension, benefit, allowance or advance made by an Institution including overpayments.

ARTICLE 20
Payment of Benefits

1. The benefits payable by virtue of this Agreement and listed in this paragraph shall be payable within and outside the territories of both Parties:

(a) for Australia:

- age pensions,
- invalid pensions,
- wife’s pensions,
and
- pensions payable to widows for persons who are Class B widows or Class A widows
who were widowed in Australia.

(b) for Spain:
- invalidity,
- old age, and
- death and survivors.

2. The benefits payable by virtue of this Agreement or otherwise and listed in this paragraph shall be paid in Australia and Spain with no limitation by time:

(a) for Australia:
- carer’s pensions,
and
- pensions payable to widows who are not included in subparagraph 1(a).

(b) for Spain:
- invalidity,
- old age, and
- death and survivors.

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

4. A benefit payable by a party by virtue of this Agreement shall be paid by that Party, 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.

5. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia becoming again an Australian resident, and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.
ARTICLE 21

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, promptly after the first-mentioned laws are made;
   
   (b) advise each other directly of internal action to implement this Agreement and any 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 Arrangement made for its implementation.

2. The 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 22.

3. The assistance referred to in paragraphs 1 and 2 shall be provided free of charge, subject to any arrangement reached between the Competent Authorities and Institutions for the reimbursement of certain types of expenses.

4. Any information about a person which is transmitted in accordance with this Agreement to an Institution shall be protected in the same manner as information obtained under the legislation of that Party.
5. In no case shall the provisions of paragraphs 1, 2 and 4 be construed so as to impose on the Competent Authority or Institution of a Party the obligation:

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

6. In this Article the meaning of “legislation” is not confined by any restrictions imposed by Article 2.

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

ARTICLE 22

Administrative Arrangements

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

ARTICLE 23

Review of Agreement

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

ARTICLE 24

Entry Into Force and Termination

1. This Agreement shall enter into force one month after an exchange of notes by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalized.

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

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

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

by virtue of this Agreement.

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

DONE in 2 copies at CANBERRA this 10th day of FEBRUARY 1990 in the Spanish and English languages, each text being equally authoritative.

FOR AUSTRALIA:  FOR SPAIN:
BRIAN HOWE  JOSE LUIS PARDOS

[Signatures omitted]
AGREEMENT BETWEEN AUSTRALIA AND MALTA ON SOCIAL SECURITY

Australia and Malta,

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

Resolved to co-ordinate their social security systems;

Have agreed as follows:

PART I—GENERAL PROVISIONS

ARTICLE 1

Interpretation

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

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

“benefit” means, in relation to a Party, a benefit for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that benefit, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

“Competent Authority” means, in relation to Australia, the Secretary of the Department of Social Security and, in relation to Malta, the Director of Social Security;
“Competent Institution” means, in relation to Australia the Competent Authority for Australia and in relation to Malta, the Competent Authority for Malta;

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

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

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

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

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

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

ARTICLE 2

Legislative Scope

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

(a) in relation to Australia: the Social Security Act 1947 in so far as the Act provides for, applies to or affects:
(i) age pensions;
(ii) invalid pensions;
(iii) wives’ pensions; and
(iv) pensions payable to widows; and

(b) in relation to Malta: the Social Security Act, 1987 as it provides for, applies to or affects:

(i) contributory pensions in respect of retirement;
(ii) contributory pensions in respect of invalidity;
(iii) contributory pensions in respect of widowhood; and
(iv) non-contributory assistance and pensions.

2. Notwithstanding the provisions of paragraph 1 the legislation of either Party shall not include any laws made at any time for the purpose of giving effect to any reciprocal agreement on Social Security entered into by either Party.

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

4. In respect of non-contributory assistance and pensions payable under the legislation of Malta, a citizen of Australia shall have the same rights as a citizen of Malta.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

(a) is or has been an Australian resident; or
(b) is or has been an insured person under the legislation of Malta,

and, where applicable, to other persons in regard to the rights they derive from the person described above.
ARTICLE 4

Equality of Treatment

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

PART II—PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 5

Residence or Presence in Malta or a Third State

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

   (a) is an Australian resident or residing in the territory of Malta or a third State with which Australia has concluded an agreement on social security that includes provision for co-operation in the assessment and determination of claims for benefits; and
   (b) is in Australia, or the territory of Malta 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 wife’s pension who has never been an Australian resident.

ARTICLE 6

Spouse Related Australian Benefits

For the purposes of this Agreement, a person who receives from Australia an Australian benefit due to the fact that the spouse of that person receives, by virtue of this Agreement, another Australian benefit shall be deemed to receive that first-mentioned benefit by virtue of this Agreement.
ARTICLE 7

Totalisation for Australia

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

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

(b) a period of residence in Australia equal to or greater than the minimum period identified in accordance with paragraph 4 for that person,

and 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 purposes of paragraph 1, where a person:

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

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

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

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

4. The minimum period of residence in Australia which a person must have accumulated before paragraph 1 applies shall be as follows:

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Social Security (International Agreements) Act 1999
(a) for the purposes of an Australian benefit that is payable to a person residing outside Australia, the minimum period required shall be one year, of which at least 6 months must be continuous; and

(b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum period shall be required.

5. For the purposes of a claim by a person for a pension payable to a widow, that person shall be deemed to have accumulated a period of insurance for any period for which her spouse accumulated a period of insurance but any period during which the person and her spouse both accumulated periods of insurance shall be taken into account once only.

6. Where a person receives in Malta a contributory pension in respect of retirement by virtue of this Agreement, Australia shall, for the purposes of this Article, regard the period during which that person receives that pension, up to the age of 65, as a period of insurance.

ARTICLE 8

Calculation of Australian Benefits

1. Subject to paragraph 2, where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who is outside Australia the rate of that benefit shall be determined according to the legislation of Australia but when assessing the income of that person for the purposes of calculating the rate of the Australian benefit only a proportion of any Maltese contributory pension in respect of retirement, invalidity or widowhood which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of residence in Australia (not exceeding 300) by the amount of that Maltese benefit and dividing that product by 300.

2. A person referred to in paragraph 1 shall only be entitled to receive the concessional assessment of income described in that paragraph for any period during which the rate of that person’s Australian benefit is proportionalised under the legislation of Australia.
3. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise to a person who is resident in the territory of Malta, Australia shall disregard, when assessing the income of that person any non-contributory assistance and pension paid to that person by Malta.

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

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

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

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

5. Where a married person is, or both that person and his or her spouse are, in receipt of a Maltese benefit or benefits, each of them shall be deemed, for the purpose of paragraph 4 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

6. If a person would receive an Australian benefit except for the operation of paragraph 4 or except for that person’s failure to claim the benefit, then for the purposes of a claim by that person’s spouse for a payment under the legislation of Australia that person shall be deemed to receive that benefit.

7. The reference in paragraph 6 to a payment under the legislation of Australia to the spouse of a person is a reference to a payment of any benefit, pension or allowance payable under the Social Security Act 1947 as amended from time to time and whether payable by virtue of this Agreement or otherwise.
PART III—PROVISIONS RELATING TO MALTESE BENEFITS

ARTICLE 9

Totalisation for Malta

1. Where this Agreement applies and there is a period of insurance that is:
   (a) less than the period necessary to give a claimant entitlement to the benefit claimed under the legislation of Malta; and
   (b) equal to or greater than the minimum period mentioned in paragraph 3 for that benefit,

then any period of residence in Australia by the contributor to whom that period of insurance was credited shall be deemed to be a period of insurance.

2. For the purposes of this Article, where a period of insurance and a period of residence in Australia coincide, the period of coincidence shall be taken into account once only as a period of insurance.

3. The minimum period of insurance to be taken into consideration for purposes of paragraph 1 shall be 52 paid contributions. However, subject to paragraph 5, where the period of insurance, not being less than 52 paid contributions, does not entitle a person to a Maltese benefit, but the period of insurance in Malta and the period of residence in Australia together entitle such person to a Maltese benefit, they shall be taken into account.

4. The provisions of this Article shall not apply in the case of a Two-Thirds Pension (Retirement) or a Survivor’s Pension (Widowhood) unless:
   (a) in the case of a Two-Thirds Pension, the person concerned would have paid at least 156 contributions under the legislation of Malta after the 22nd January, 1979; and
   (b) in the case of a Survivor’s Pension, the husband of the widow concerned would have paid at least 156 contributions under the legislation of Malta after the 22nd January, 1979.
5. For the purposes of a claim by a person for a contributory widow’s pension the contributor, provided the contributor meets the requirements of subparagraph 1(b), shall be deemed to have also accumulated a period of residence in Australia for any period for which the claimant accumulated a period of residence in Australia but any period during which the contributor and the claimant both accumulated periods of residence in Australia shall be taken into account once only.

ARTICLE 10

Calculation of Maltese Benefits

1. Where Malta pays non-contributory assistance or pension by virtue of this Agreement, the rate of that benefit shall be determined according to the legislation of Malta.

2. Where a contributory benefit is payable by Malta to a claimant by virtue of this Agreement the rate of that benefit shall be calculated as follows:

   (a) in the case of a pension in respect of retirement other than a Two-Thirds Pension, by multiplying the applicable rate of that pension attributable to the claimant by the number of reckonable contributions (not exceeding 2400) on which that pension would have otherwise been calculated under the legislation of Malta and dividing the product by the number of totalised contributions aggregated under Article 9 (not exceeding 2400);

   (b) in the case of a Two-Thirds Pension, the rate of that pension shall be calculated according to the following formula:

\[
P. I. \times \frac{2(\frac{T1 + T2}{Y 10}) \times (\frac{C1 + C2}{T1 T2})}{600}
\]

but that pension shall not be payable if the formula

\[
\frac{(T1 + T2)}{(Y 10)} \leq \frac{2}{2}
\]
gives a result that is less than 15

where:

\[ P.I. = \text{the claimant’s pensionable income or re-assessed pensionable income (as the case may be) according to the legislation of Malta;} \]
\[ C_1 = \text{the number of reckonable contributions (not exceeding 1000) during any period prior to the last 10 calendar years immediately before retirement;} \]
\[ C_2 = \text{the number of reckonable contributions (not exceeding 500) within the last 10 calendar years immediately before retirement;} \]
\[ T_1 = \text{the number of totalised contributions (not exceeding 1000) aggregated under Article 9 during any period prior to the last 10 calendar years immediately before retirement;} \]
\[ T_2 = \text{the number of totalised contributions (not exceeding 500) aggregated under Article 9 within the last 10 calendar years immediately before retirement;} \]
\[ Y = \text{the number of reckonable years (not exceeding 20) prior to the last 10 calendar years immediately before retirement.} \]

(c) in the case of a pension in respect of invalidity, by multiplying the applicable rate of that pension attributable to the claimant by the number of reckonable contributions (not exceeding 2400) on which that pension would have otherwise been calculated under the legislation of Malta and dividing the product by the number of reckonable totalised contributions aggregated under Article 9 (not exceeding 2400);

(d) in the case of a pension in respect of widowhood other than a Survivor’s Pension by multiplying the applicable rate of that pension attributable to the claimant by the number of reckonable contributions (not exceeding 2400) on which that pension would have otherwise been calculated under the legislation of Malta relating to her late husband and dividing...
the product by the number of totalised contributions aggregated under Article 9 (not exceeding 2400); and

(e) in the case of a Survivor’s Pension at 5/6 of the rate of pension arrived at in accordance with the provisions of paragraph 2(b).

3. Any statutory pension additional rates that are applicable to certain benefits covered by this Agreement that are payable under the legislation of Malta, payment of which is also linked to a yearly contribution average, shall be calculated in the same manner as that indicated in paragraph 2, as the case may require.

4. Where Malta pays a Maltese benefit to a person only by virtue of the Agreement it shall deduct any statutory pension deductions that would be deducted if those pensions were paid solely under the legislation of Malta provided that any service pension for war service or wife’s service pension paid to that person by Australia as defined in and payable under its Veterans’ Entitlement Act 1986 shall not for the purposes of this Agreement or otherwise under the legislation of Malta be treated as a service pension as defined in the legislation of Malta.

5. Any pension arrived at in accordance with paragraphs 2, 3 and 4 shall be rounded up to the nearest whole cent.

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

PART IV—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 11

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of either of the Parties in accordance with an Administrative Arrangement made pursuant to Article 15 at any time after the Agreement enters into force.

2. The date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the
date of lodgement of that document with the Competent Institution of the first Party.

3. In relation to Australia, the reference in paragraph 2 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, the *Social Security Act 1947* of Australia as amended from time to time.

4. In relation to Malta, the reference in paragraph 2 to an appeal document is a reference to a document concerning an appeal that may be made to the Umpire for the purposes of the *Social Security Act, 1987* of Malta as amended from time to time.

**ARTICLE 12**

**Determination of Claims**

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

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

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

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

3. Where:

   (a) a claim is made for a benefit payable by one of the Parties by virtue of this Agreement; and
   (b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to a benefit that is payable by the other Party and

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

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

   then

   (d) the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid throughout that past period shall be a debt due by that person to the other Party; and
   (e) the other Party may determine that the amount, or any part, of that debt may be deducted from future payments of a benefit payable by that Party to that person.

5. Where the first Party has not yet paid the arrears of benefit described in subparagraph 4(a) to the person:

   (a) that Party shall, at the request of the other Party, pay the amount of the debt described in subparagraph 4(d) to the other Party and shall pay any excess to the person; and
   (b) any shortfall in those arrears may be recovered by the other Party under subparagraph 4(e).

6. The Competent Institution receiving a request under paragraph 5 shall take the action set out in an Administrative Arrangement made pursuant to Article 15, to recoup the amount of the overpayment and to transfer it to the other Competent Institution.
7. A reference in paragraphs 3, 4 and 5 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the Social Security Act 1947 of Australia as amended from time to time, and in relation to Malta, means any pension, benefit, allowance or assistance that is payable under the Social Security Act, 1987 of Malta.

ARTICLE 13

Payment of Benefits

1. The benefits payable by virtue of this Agreement and listed in this paragraph shall be payable within and outside the territories of both Parties:

(a) for Australia:

(i) age pensions;
(ii) invalid pensions;
(iii) wives’ pensions;
(iv) pensions payable to widows who were widowed while both they and their husbands were Australian residents;
(v) class B widows’ pensions; and

(b) for Malta: contributory pensions in respect of retirement, invalidity and widowhood.

2. A pension payable to a widow whether payable by virtue of this Agreement or otherwise, shall be paid by Australia in the territories of both Parties with no limitation by time.

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

4. A party that imposes restrictions described in paragraph 3 shall inform the other Party of those restrictions within one calendar month of their imposition and shall adopt the measures described in paragraph 3 within 3 months of the imposition of those restrictions. If the other Party is not so informed or if the necessary measures are not adopted
within the set time the other Party may treat such a failure as a material breach of the Agreement for the purposes of Article 60 of the Vienna Convention on the Law of Treaties.

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

6. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia becoming again an Australian resident, and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.

ARTICLE 14

Exchange of Information and Mutual Assistance

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

(a) shall communicate to each other any information necessary for the application of this Agreement or of the Social Security Laws of the Parties;
(b) shall lend their good offices and furnish assistance to one another with regard to the determination or payment of any benefit under this Agreement or the legislation to which this Agreement applies as if the matter involved the application of their own legislation;
(c) shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation in so far as these changes affect the application of this Agreement; and
(d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in an Administrative Arrangement made pursuant to Article 15.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangement made pursuant to Article 15.

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

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

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

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

   ARTICLE 15

   Administrative Arrangement

   The Competent Authorities of the Parties shall make whatever Administrative Arrangement is necessary from time to time in order to implement this Agreement.
ARTICLE 16

Resolution of Difficulties

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

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

3. Any dispute between the Parties concerning the interpretation of this Agreement which has not been resolved or settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration.

4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators so appointed shall appoint a third who shall act as president; provided that if the two arbitrators fail to agree, the President of the International Court of Justice shall be requested to appoint the president.

5. The arbitrators shall determine their own procedures.

6. The decision of the arbitrators shall be final and binding.

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

ARTICLE 17

Review of Agreement

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

ARTICLE 18

Entry into Force and Termination

1. This Agreement shall enter into force one month after an exchange of notes by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalized.

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

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

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

by virtue of this Agreement.

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

DONE in duplicate at Canberra this fifteenth day of August 1990.

FOR AUSTRALIA:  FOR MALTA:
Graham Richardson  Louis Galea

[Signatures omitted]
Schedule 7—Netherlands

Note: See section 5.

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

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

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

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

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

Have agreed as follows:

PART I GENERAL PROVISIONS

ARTICLE 1

Definitions

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

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

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

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

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

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

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

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

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

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

ARTICLE 2

Legislative Scope

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

   a) in relation to Australia:
i) the Acts forming the social security law, in so far as the law provides for, applies to or affects the following benefits:
   A) age pensions;
   B) disability support pension for a person who is severely disabled; and

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

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

and for the application of Part II of the Agreement also its legislation on:
   vi) unemployment insurance;

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

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any agreement on social security entered into by Australia with other States.

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

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

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

ARTICLE 3

Personal Scope

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

a) is or has been an Australian resident, or
b) is or has been subject to the legislation of the Netherlands,

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

ARTICLE 4

Equality of Treatment

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

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

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ARTICLE 5

Payment of benefits abroad

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

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

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

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

PART II — PROVISIONS ON COVERAGE

SECTION A

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

ARTICLE 6

Purpose of Section A

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

ARTICLE 7
Application of Section A

Section A only applies where:

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

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

ARTICLE 8
Provisions on coverage

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

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

3. If an employee:
   a) is covered by the legislation of one Party (‘the first Party’); and
   b) was sent, whether before, on or after the commencement of this Part, by an employer who is subject to the legislation of the first Party to work in the territory of the other Party (‘the second Party’); and
c) is working in the territory of the second Party in the employment of the employer or a related entity of that employer; and

d) was sent to work in the territory of the second Party and a period of 5 years has not elapsed from that time; and

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

the employer and employee shall be subject only to the legislation of the first Party in respect of the work and the remuneration paid for the work. An entity is a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

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

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

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

ARTICLE 9

Exception agreements

1. The competent authority for Australia and the competent institution for the Netherlands may for the purposes of Section A by agreement in writing:

   a) extend the period of 5 years referred to in subparagraph 3(d) of Article 8 for any employee; or

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

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

SECTION B

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

ARTICLE 10

Partner or Children of Seconded Employees Temporary Absence from Australia

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

ARTICLE 11

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

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

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

PART III PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 12

Residence or Presence in the Netherlands or a Third State

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

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

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

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

ARTICLE 13

Partner related Australian benefits

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

ARTICLE 14

Totalisation for Australia

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

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

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

4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:
   a) for the purposes of an Australian benefit claimed by a person residing outside Australia, the minimum period required shall be one year, of which at least six months must be continuous, and
   b) for the purposes of an Australian benefit claimed by an Australian resident there shall be no minimum period of Australian working life residence.

ARTICLE 15

Calculation of Australian Benefits

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

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

The calculation described in sub-paragraph c may be expressed as
A = \frac{Q \times [R - (\frac{NP \times Q}{300 + I - F})]}{300 \times T}

where:

- \(A\) = Rate of Australian benefit payable;
- \(Q\) = Number of months of the period of residence in Australia of the person or 300 whichever is the lower;
- \(R\) = Maximum rate of Australian benefit;
- \(NP\) = Netherlands’ benefit excluding AOW toeslag;
- \(I\) = Income within the meaning of Australian legislation excluding Netherlands’ benefit and any payments according to the Algemene Bijstandswet;
- \(F\) = Free area under the Australian income test;
- \(T\) = the relevant taper under Australian legislation.

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

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

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

6. Where a person is, or his or her partner is, or both that person and his or her partner are, in receipt of a Netherlands’ benefit or benefits, each of them shall be deemed, for the purpose of paragraph 4 and for the Acts forming the social security law as amended from time to time, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.
ARTICLE 16
Exclusion of specified Netherlands’ payments from the Australian income test

1. Where a person receives or is entitled to receive a benefit under the social security laws of Australia:
   a) reimbursement payments for extra medical, nursing and immediately related expenses of a victim of persecution; and
   b) the special allowance covering the extra medical expenses a victim of persecution has, but which are beyond his or her capacity to meet, while maintaining a certain standard of living,

made under the State Assistance Scheme of the 1940-1945 Victims of Persecution (WUV), shall not be included as income for the purpose of assessing the rate of that Australian benefit.

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

PART IV PROVISIONS RELATING TO THE NETHERLANDS BENEFITS

ARTICLE 17

Benefits under the General Old Age Pensions Act

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

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

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

**ARTICLE 18**

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

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

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

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

**ARTICLE 19**

*Refusal to pay, suspension, withdrawal*

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

ARTICLE 20

Common Provisions for the Calculation of Benefits

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

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

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

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

PART VI MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 21

Lodgement of Documents

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

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

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

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

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

**ARTICLE 22**

*Recovery of overpayments*

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

that first-mentioned benefit shall not be paid or continue to be paid if a claim is not duly lodged for payment of the second-mentioned benefit or if that claim is not actively pursued.
2. Where:
   a) a benefit under this Agreement or otherwise is claimed from one of the Parties and, as a result of that claim, a benefit is payable by a Party to a person in respect of a past period and that past period occurred after the entry into force of this Agreement;
   b) for all or part of that period, the other Party has paid to that person a benefit under its legislation; and
   c) the amount of the benefit paid by that other Party would have been reduced had the benefit referred to in subparagraph (a) been paid during that past period,

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

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

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

5. The amount of any overpayment shall be a debt due by the person who received it to the Party that paid it.

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

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

ARTICLE 23

Payments of Benefits

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

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

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

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

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

ARTICLE 24

Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement shall:
   a) to the extent permitted by the legislation which they administer, communicate to each other any information necessary for the application of this Agreement;
   b) lend their good offices and furnish assistance to one another (including the communication to each other of any information necessary) with regard to the determination or payment of any benefit under this Agreement or under the legislation to which this Agreement applies as if the matter involved the application of their own legislation;
   c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation insofar as these changes affect the application of this Agreement;
   d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 25;
   e) jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the Competent Authorities and Competent Institutions for the reimbursement of certain types of expenses.

3. Unless disclosure is required under the laws of a Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or a Competent Institution of that Party by a Competent Authority or a Competent Institution of the other Party is confidential and shall be used only for purposes of implementing this Agreement and the legislation to which this Agreement applies.
4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the Competent Authority or Competent Institution of a Party the obligation:
   a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party, or
   b) to supply particulars which are not obtainable under the laws or, in the normal course of the administration of that or the other Party.

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

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

**ARTICLE 25**

*Administrative Arrangement*

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

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

**ARTICLE 26**

*Review of the Agreement*

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

**PART VII  TRANSITIONAL AND FINAL PROVISIONS**

**ARTICLE 27**

*Commencement of Benefits*

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

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

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

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

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

**ARTICLE 28**

_Transitional Provisions_

1. Upon the entry into force of this Agreement the 1991 Agreement shall terminate and shall be replaced by this Agreement.

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

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

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

Social Security (International Agreements) Act 1999
of the second month following signature and also, for the Kingdom of the Netherlands, subparagraph 1(b) of Article 2 and Article 5 shall have retrospective effect to 1 January 2000.

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

4. In the event that this Agreement is terminated in accordance with paragraph 3, this Agreement shall continue to have effect in relation to all persons who:
   a) at the date of termination, are in receipt of benefits, or
   b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits; by virtue of this Agreement; or
   c) immediately before the date of termination are subject only to the legislation of one Party by virtue of paragraph 2 or 3 of Article 8 of Part II, Section A of the Agreement, provided the employee continues to satisfy the criteria of these paragraphs.

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

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

FOR THE GOVERNMENT OF
AUSTRALIA
Peter Hussin

FOR THE GOVERNMENT OF THE
KINGDOM OF THE NETHERLANDS
J F Hoogervorst
AGREEMENT BETWEEN AUSTRALIA AND IRELAND ON SOCIAL SECURITY

Australia and Ireland,

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

and

Resolved to coordinate their social security systems,

Have agreed as follows:

PART I—GENERAL PROVISIONS

ARTICLE 1

Definitions

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

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

(b) “Competent Authority” means, in relation to Australia:

the Secretary to the Department of Social Security;

and in relation to Ireland:

the Minister for Social Welfare;
(c) “Competent Institution” means, in relation to Australia:

the Department of Social Security;

and in relation to Ireland:

the Department of Social Welfare;

(d) “legislation” means, in relation to Australia:

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

and in relation to Ireland:

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

(e) “period of residence in Australia”, 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 8 to be a period in which that person was an Australian resident;

(f) “Irish period of insurance” means, a period in respect of which qualifying contributions have been paid or a period in respect of which contributions have been treated as paid or credited and which has been or can be used to acquire the right to benefit under the legislation of Ireland, but does not include any period deemed pursuant to Article 10 to be an Irish period of insurance;

(g) “territory” means, in relation to Australia:

Australia as defined in the legislation of Australia;

and in relation to Ireland:

that part of the island of Ireland which is at present under the jurisdiction of the Government of Ireland;

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

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

 ARTICLE 2

Legislative Scope

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

(a) in relation to Australia: the *Social Security Act 1947* in so far as the Act provides for, applies to or affects the following benefits:

   (i) age pensions;
   (ii) invalid pensions;
   (iii) pensions payable to widows;
   (iv) wives’ pensions; and
   (v) widowed person’s allowances;

(b) in relation to Ireland: the *Social Welfare Acts 1981 to 1991* and the regulations made thereunder to the extent that they provide for and apply to:

   (i) old age (contributory) pensions;
   (ii) retirement pensions;
   (iii) widow’s (contributory) pensions;
   (iv) invalidity pensions;
   (v) orphan’s (contributory) allowances;
   (vi) death grants; and
   (vii) the liability for the payment of employment and self-employment contributions.

2. Notwithstanding the provisions of paragraph 1, the legislation of Australia shall not include any laws made at any time for the purpose of giving effect to any agreement on social security.

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

Personal Scope

This Agreement shall apply to any person who:

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

(b) is or has been subject to the legislation of Ireland,

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

ARTICLE 4

Equality of Treatment

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

ARTICLE 5

Detached Workers

1. (a) Where a person, who is insurably employed under the legislation of Ireland, is sent by his or her employer, whose principal place of business is in the territory of Ireland, to the territory of Australia to perform work there on the employer’s behalf which is of a temporary nature, the legislation of Ireland concerning liability for the payment of employment contributions shall apply during the first 24 months of the employment in the territory of Australia.

(b) However, if the time taken to complete the work in the territory of Australia exceeds 24 months the Competent Authority of Ireland may, at the request of the employer of the person concerned, extend the period in respect of which the legislation of Ireland shall apply.
2. (a) The Competent Authority of Ireland may grant exemption from liability to pay employment contributions which would otherwise be payable under the legislation of Ireland, for a period not exceeding 24 months, in respect of employment in the territory of Ireland of an Australian resident, where the Competent Authority of Ireland is satisfied that the employment is of a temporary nature.

(b) If, however, the time taken to complete the work in the territory of Ireland exceeds 24 months, the Competent Authority of Ireland may extend the period in respect of which the said exemption shall apply.

PART II—PROVISIONS RELATING TO BENEFITS AUSTRALIAN BENEFITS

ARTICLE 6

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

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

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

   that person 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 wife’s pension who has never been an Australian resident.
ARTICLE 7

Spouse Related Australian Benefits

For the purposes of Article 9 only, a person who receives from Australia an Australian benefit, pension or allowance under the social security laws of Australia due to the fact that the spouse of that person receives, by virtue of this Agreement, an Australian benefit shall be deemed to be receiving that benefit, pension or allowance as if it were an Australian benefit received by virtue of this Agreement.

ARTICLE 8

Totalisation for Australia

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

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

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

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

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

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

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

(a) for the purposes of an Australian benefit that is payable to a person residing outside Australia, the minimum period required shall be 12 months, of which at least 6 months must be continuous; and

(b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum period shall be required.

5. For the purpose of a claim by a person for a pension payable to a widow, that person shall be deemed to have accumulated an Irish period of insurance for any period for which her spouse accumulated an Irish period of insurance but any period during which the person and her spouse both accumulated those periods of insurance shall be taken into account once only.

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

ARTICLE 9

Calculation of Australian Benefits

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

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

3. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise to a person who is resident in the territory of Ireland, Australia shall disregard, when assessing the income of that person, any of the Irish payments listed hereunder:

   (i) unemployment assistance;
   (ii) old age pension;
   (iii) blind pension;
   (iv) widow’s (non-contributory) pension;
   (v) orphan’s (non-contributory) pension;
   (vi) deserted wife’s allowance;
   (vii) prisoners’ wife’s allowance;
   (viii) lone parent’s allowance;
   (ix) single woman’s allowance
   (x) supplementary welfare allowance;
   (xi) child benefit;
   (xii) rent allowance;
   (xiii) a maintenance allowance under section 69 of the *Health Act 1979*;
   (xiv) any allowance, dependant’s allowance, disability pension or wound pension under the *Army Pensions Act 1923 to 1980*;

and any other payments of a similar nature, as mutually determined from time to time in letters exchanged between the Ministers respectively administering the legislation of Australia and Ireland, paid to that person by Ireland.

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

5. Where a married person is, or both that person and his or her spouse are, in receipt of an Irish benefit or benefits, each of them shall be deemed, for the purpose of paragraph 4 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.

6. If a person would receive an Australian benefit except for the operation of paragraph 4 or except for that person’s failure to claim the benefit, then for the purposes of a claim by that person’s spouse for a payment under the legislation of Australia that person shall be deemed to receive that benefit.

7. The reference in paragraph 6 to a payment under the legislation of Australia to the spouse of a person is a reference to a payment of any benefit, pension or allowance payable under the social security laws of Australia and whether payable by virtue of this Agreement or otherwise.

8. As soon as is practicable after the exchange of letters in which Irish payments are mutually determined for the purposes of paragraph 3, the Minister administering the legislation of Australia shall cause to be published in the Commonwealth of Australia Gazette a notice specifying such Irish payments.
PART III—PROVISIONS RELATING TO IRISH BENEFITS

ARTICLE 10

Totalisation for Ireland

1. Notwithstanding the provisions of paragraphs 2 and 3 of this Article where a person is entitled to an Irish benefit by virtue of his or her Irish periods of insurance alone, that benefit shall be payable and the provisions of paragraph 2 of this Article shall not apply.

2. Subject to paragraph 4, if a person is not entitled to an Irish benefit on the basis of his or her Irish periods of insurance alone, then such periods shall be totalised with periods of residence in Australia, in accordance with the provisions of paragraph 3. The person’s entitlement to benefit shall be determined on the basis of the totalised periods in accordance with the statutory contribution conditions provided for under the legislation of Ireland and the amount of Irish benefit payable shall be calculated in accordance with the provisions of Article 11.

3. For the purposes of determining entitlement to an Irish benefit in accordance with the provisions of paragraph 2, a period of residence in Australia by a person shall be considered to be a period in respect of which the person has qualifying contributions under the legislation of Ireland.

4. For the purposes of paragraph 3, each calendar week or part thereof in which a person has a period of residence in Australia shall be deemed to be a contribution week in respect of which the person has a qualifying contribution under the legislation of Ireland.

5. Where a period of residence in Australia and an Irish period of insurance coincide, the period of coincidence shall be taken into account once only by Ireland as an Irish period of insurance.

6. Subject to paragraph 7, if the total duration of the Irish periods of insurance completed under the legislation of Ireland is less than one year and if, taking into account only those periods, no right to a benefit exists under that legislation, the Competent Authority of Ireland will
not be required to award benefits in respect of those periods by virtue of this Agreement.

7. For the purpose of determining entitlement to a death grant or orphan’s (contributory) allowance:

(a) periods of residence in Australia shall be taken into account as if they were Irish periods of insurance completed under the legislation of Ireland;

(b) periods of residence in Australia shall be converted into Irish periods of insurance in accordance with the provisions of paragraph 3, with the exception that no period of residence in Australia prior to 1 October 1970 shall be taken into account for the purposes of determining entitlement to a death grant.

8. For the purposes of determining entitlement of a person to an invalidity pension, any period of continuous incapacity for work which occurs during a period of residence in Australia by that person shall be deemed to be a period of continuous incapacity in the territory of Ireland.

9. For the purposes of converting periods of residence in Australia into Irish periods of insurance as provided for in paragraphs 3 and 7, periods of residence in Australia which occur either before a person attains the age of 16 years or after a person attains pensionable age in Australia shall not be taken into account.

ARTICLE 11

Calculation of Irish Benefits

1. Where a person is entitled to an Irish benefit by virtue of the totalisation arrangements prescribed in Article 10, the Competent Institution of Ireland shall calculate the amount of benefit, other than death grant and orphan’s (contributory) allowance, as follows:

(a) the amount of the theoretical benefit exclusive of any additional amount, or supplement or any increase other than an increase for an adult dependent which would be payable if all the periods of residence in Australia and all the Irish periods of insurance had been completed under Irish legislation;
(b) the proportion of such theoretical benefit which bears the same relation to the whole as the total of Irish periods of insurance completed under the legislation of Ireland bears to the total of all periods of residence in Australia and Irish periods of insurance.

The proportionate amount thus calculated plus any additional amount, supplement or increase other than an increase for an adult dependent shall be the rate of benefit actually payable by the Competent Institution of Ireland.

2. In the case of death grant and orphan’s (contributory) allowance the amount of benefit payable shall be calculated in accordance with the relevant contribution conditions under the legislation of Ireland taking account of the provisions of Article 10(7).

PART IV—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 12

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of either of the Parties in accordance with administrative arrangements made pursuant to Article 16 at any time after the Agreement enters into force.

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

3. In relation to Australia, the reference in this Article to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by the social security laws of Australia.
ARTICLE 13

Determination of Claims

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

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

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

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

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

   (b) Where a claim for a determination in accordance with subparagraph (a) is submitted within two years from the date of entry into force of the Agreement, the benefit shall be paid from that date; otherwise the benefit shall be paid from the date determined under the legislation of Ireland.

4. Where:

   (a) an Australian benefit payable by virtue of this Agreement is claimed or is being paid; and
   (b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or
otherwise, to an Irish benefit and, if paid, would affect the amount of the Australian benefit,

that Australian benefit shall not be paid or continue to be paid until a claim is duly lodged for payment of the Irish benefit or if the claim for the Irish benefit is not actively pursued.

5. Where:

(a) a benefit is paid or payable by a Party to a person in respect of a past period;
(b) for all or part of that period, the other Party has paid to that person a benefit under its legislation; and
(c) the amount of the benefit paid by that other Party would have been reduced had the benefit paid or payable by the first Party been paid during that period;

then

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

6. Where the first Party has not yet paid the benefit described in subparagraph 5(a) to the person:

(a) that Party shall, at the request of the other Party, pay the amount of the benefit necessary to meet the debt described in subparagraph 5(d) to the other Party and shall pay any excess to the person; and
(b) any shortfall may be recovered by the other Party under subparagraph 5(e).

7. The Competent Institution receiving a request under paragraph 6 shall transfer the amount of the debt to the Competent Institution making the request.
8. A reference in paragraphs 4, 5 and 6 to a benefit, means, in relation to Australia, a pension, benefit or allowance that is payable under the social security laws of Australia and, in relation to Ireland, any pension, benefit or allowance payable under the laws of Ireland.

ARTICLE 14

Payment of Benefits

1. Benefits of one Party are also payable in the territory of the other Party.

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

4. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia, becoming again an Australian resident, and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.

ARTICLE 15

Exchange of Information and Mutual Assistance

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

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

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

(d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 16.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any administrative arrangements made pursuant to Article 16.

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

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

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

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

5. In the application of this Agreement, the Competent Authority and the Competent Institution of a Party may communicate with the other in any official language of that Party.
ARTICLE 16

Administrative Arrangements

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

ARTICLE 17

Resolution of Difficulties

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

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

ARTICLE 18

Review of Agreement

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

PART V—TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 19

Entry Into Force and Termination

1. This Agreement is subject to ratification. The instruments of ratification shall be exchanged at Dublin as soon as possible.

2. Once all constitutional and legislative requirements, including administrative arrangements referred to in Article 16 of this Agreement
have been fulfilled 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.

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

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

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

by virtue of this Agreement.

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

DONE in 2 copies at CANBERRA this EIGHTH day of APRIL, one thousand nine hundred and ninety-one.

FOR AUSTRALIA: FOR IRELAND:
GRAHAM RICHARDSON MICHAEL WOODS

[Signatures omitted]
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

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Schedule 9—Portugal

Note: See section 5.
the application of Part III of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner; and,
in relation to Portugal: the Minister or other corresponding authority responsible for the social security schemes in all or any part of the territory of Portugal;

(d) “Competent Institution” means:
in relation to Australia: the institution or agency responsible for the administration of the legislation; and,
in relation to Portugal:
(i) the institution with which the person concerned is insured at the time of the application for benefit; or
(ii) the institution from which the person concerned is entitled or would be entitled to benefits if he or she or a member or members of his or her family were resident in the territory of the Party in which the institution is situated; or
(iii) the institution designated by the Competent Authority of Portugal;

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

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

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

(h) “Portuguese insurance period” means the period of contributions or any equivalent period which has been or can be used to acquire the right to a benefit under Portuguese legislation, but does not include any period considered under paragraph 1 of Article 18 as a Portuguese insurance period;

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

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

(k) “widow” means:

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

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

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

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

(a) in relation to Australia:
   (i) the Acts forming the social security law in so far as the law provides for, applies to or affects the following benefits:
       - age pension;
       - disability support pension for the severely disabled;
       - wife pension;
       - carer payment;
       - pensions payable to widows;
       - bereavement allowance;
       - additional child amount;
       - double orphan pension; and
   (ii) the law concerning the superannuation guarantee (which at the time of signature of this Agreement is contained in the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Regulations);

(b) in relation to Portugal:
   (i) the legislation relating to the general scheme (including the voluntary social insurance scheme) and the special schemes (excluding provisions for civil servants or persons treated as such) of the social security system in respect of the following benefits:
       - old age pension;
       - invalidity pension;
       - survivors’ pension and death grant;
       - supplement for care;
       - sickness and maternity benefits;
       - unemployment benefit;
       - funeral grant; and
       - family allowance for children and young people of pensioners;
(ii) the legislation relating to work injuries and occupational diseases pensions; and
(iii) the legislation relating to the non-contributory scheme in respect of old age, invalidity and survivors’ pensions and supplement for care.

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

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

ARTICLE 3
Personal Scope

This Agreement shall apply to any person who:
(a) is or has been an Australian resident; or
(b) is or has been subject to the legislation of Portugal;

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

ARTICLE 4
Equality of Treatment

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

ARTICLE 5
Voluntary Social Insurance

As soon as an Australian citizen is deemed to be a resident in Portugal that person shall be entitled to register with the voluntary social insurance scheme under the legislation of Portugal on the same basis as a national of Portugal.
ARTICLE 6
Export of Benefits

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

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

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

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

PART II – COMMON PROVISIONS ON COVERAGE

ARTICLE 7
Application of Legislation

1. Except as otherwise provided in this Agreement, the persons to whom this Agreement applies shall be covered by:
   (a) Portuguese legislation if they are employed or resident in Portugal; or
   (b) Australian legislation if they are Australian residents.

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

ARTICLE 8
Decisions on Social Security Coverage

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

ARTICLE 9
Purpose of Part
The purpose of this Part is to ensure that employers and employees who are subject to the legislation of Portugal or Australia do not have a double liability under the legislation of Portugal and Australia, in respect of the same work of an employee.

ARTICLE 10
Application of Part
This Part only applies if an employee and/or the employer of the employee would, apart from this Part, be subject to the legislation of both Parties in respect of work of the employee or remuneration paid for the work.

ARTICLE 11
Diplomatic and Consular Relations
This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or the Vienna Convention on Consular Relations of 24 April 1963.

ARTICLE 12
Application of legislation
1. Unless otherwise provided in paragraphs 2, 4 and 5, if an employee works in the territory of one Party, the employer of the employee and the employee shall in respect of the work and the remuneration paid for the work be subject only to the legislation of that Party.

2. If an employee:
   (a) is covered by the legislation of one Party (‘the first Party’); and
   (b) was sent, whether before, on or after the commencement of this Part, by an employer who is subject to the legislation of the first Party to work in the territory of the other Party (‘the second Party’); and
(c) is working in the territory of the second Party in the employment of the employer or a related entity of that employer of the employee; and

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

(e) is not working permanently in the territory of the second Party; the employer and employee shall be subject only to the legislation of the first Party in respect of that work occurring after the commencement of this Part and the remuneration paid for such work.

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

4. Despite anything in paragraph 2:

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

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

5. If an employee is working in the employment of an employer on a ship or aircraft in international traffic, the employer of the employee shall in respect of the employment and the remuneration paid for that employment be subject only to the legislation of the Party of which the employee is resident.
ARTICLE 13
Exception agreements

1. The competent authorities for Australia and Portugal may for the purposes of this Part by agreement in writing:
   (a) extend the period of 4 years referred to in subparagraph 2 (d) of Article 12 for any employee; or
   (b) provide that an employee is taken to work in the territory of a particular Party or to work on a ship or aircraft in international traffic under the legislation of a particular Party and is subject only to the legislation of that Party.

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

PART IV- PROVISIONS RELATING TO BENEFITS
SECTION I - AUSTRALIAN BENEFITS

ARTICLE 14
Residence or Presence in Portugal or a Third State

1. Where a person would not qualify for a benefit under the legislation of Australia or by virtue of this Agreement only because he or she was not an Australian resident and present in Australia on the date on which the claim for that benefit would be lodged but that person:
   (a) is an Australian resident or a resident of Portugal (or a third country with which Australia has implemented an agreement on social security that includes provision for cooperation in the lodgement and determination of claims for benefits); and
   (b) is physically in Australia, or in Portugal or that third State; that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

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

3. For the purposes of qualification for a carer payment as defined in this Agreement, which is payable by virtue of this Agreement, a person who is in Portugal shall be regarded as being in Australia.
ARTICLE 15
Partner Related Australian Benefits
For the purposes of this Agreement, a person who receives an Australian benefit due to the fact that the partner of that person receives, by virtue of this Agreement, another Australian benefit shall be deemed to receive that first-mentioned benefit by virtue of this Agreement.

ARTICLE 16
Totalisation for Australia
1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:
   (a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the legislation of Australia for a benefit; and
   (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4; and
   (c) a Portuguese insurance period,
then that Portuguese insurance period shall be deemed to be a period in which that person was an Australian resident
- only if that Portuguese insurance period has already been used or can be used at the time of totalisation, to obtain a Portuguese benefit, and
- only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.
2. For the purposes of paragraph 1, where a person:
   (a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and
   (b) has accumulated a Portuguese insurance period in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a);
the total of the Portuguese insurance periods shall be deemed to be one continuous period.
3. Where a period by a person as an Australian resident and a Portuguese insurance period coincide, the period of coincidence shall be taken into
account once only by Australia for the purposes of this Article as a period as an Australian resident.

4. The period of Australian working life residence (as defined in Article 1) to be taken into account for the purposes of subparagraph 1 (b) shall be as follows:
   (a) for the purposes of an Australian benefit claimed by a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least 6 months must be continuous; and
   (b) for the purposes of an Australian benefit claimed by an Australian resident, there shall be no minimum period of residence in Australia required.

**ARTICLE 17**

Calculation of Australian Benefits

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

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

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

4. When an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is resident in the territory of Portugal, Australia shall disregard, when assessing the income of that person:
   (a) any benefit paid to that person under the legislation specified in subparagraph 1 (b) (iii) of Article 2; and
(b) any non-contributory supplement paid to that person by Portugal to bring the amount of that person's Portuguese benefit to the minimum level guaranteed under the legislation of Portugal.

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

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

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

220 Social Security (International Agreements) Act 1999
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.

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

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

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

ARTICLE 20
Sickness and Maternity Benefits
Where a person, after his or her last arrival in the territory of Portugal, has accomplished a contribution period under Portuguese legislation for the purposes of eligibility for a sickness or maternity benefit under that legislation, the periods of Australian working life residence shall be deemed as periods accomplished under Portuguese legislation, provided that they do not coincide.

ARTICLE 21
Unemployment Benefit
Where a person, after his or her last arrival in the territory of Portugal, has accomplished a contribution period of at least four weeks under Portuguese legislation for the purposes of eligibility for unemployment benefit under that legislation, the periods of Australian working life residence, during which an occupational activity has been pursued as an employee or Australian newstart allowance has been awarded as a result of no longer being an employee, shall be deemed as periods accomplished under Portuguese legislation, provided that they do not coincide.

ARTICLE 22
Family benefits for pensioners
Family allowances for children and young people payable under the legislation of Portugal shall be payable by virtue of this Agreement to pensioners who are residing in Australia and receiving a pension under the legislation of Portugal be they Australian citizens or Portuguese nationals and those family allowances shall for the purposes of reciprocity in relation to this Agreement be regarded as the Portuguese benefit equivalent to Australian additional child amount.

ARTICLE 23
Pensions for Accidents at Work and Occupational Diseases
1. Pensions related to incapacity due to work-related accidents or occupational diseases according to Portuguese legislation shall be paid by the competent Portuguese institution whenever a person is subject to the legislation applied by it at the time the accident occurred or at the date the occupational disease has been contracted if that person has
been pursuing an occupational activity likely to cause that disease according to the legislation of Portugal.

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

PART V- MISCELLANEOUS PROVISIONS

ARTICLE 24
Lodgement of Documents

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

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

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

ARTICLE 25
Determination of Claims

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

shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.
2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.

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

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

4. Where the first Party has not yet paid the arrears of benefit described in paragraph 3 to the person:
   (a) that Party shall, at the request of the other Party, pay the amount of the debt described in paragraph 3 to the other Party and shall pay any excess to the person in line with the provisions set out in administrative arrangements made in accordance with Article 28; and
   (b) any shortfall in those arrears may be recovered by the other Party.

5. A reference in paragraph 3 or 4 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the Acts forming the social security law of Australia as amended from time to time, and in relation to Portugal means any pension, benefit, allowance or advance made by a Competent Institution including overpayments which arise because of the payment of Portuguese and Australian benefits.
ARTICLE 26
Payment of Benefits

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

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

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

ARTICLE 27
Exchange of Information and Mutual Assistance

1. The Competent Authorities shall:
   (a) advise each other of laws that amend, supplement or replace the legislation of their respective Parties for the application of this Agreement, promptly after the first-mentioned laws are made;
   (b) advise each other directly of internal action to implement this Agreement and any Administrative Arrangement adopted for its implementation; and
   (c) advise each other of any technical problems encountered when applying the provisions of this Agreement or of any Administrative Arrangement made for its implementation.

2. The Competent Institutions of both Parties shall:
   (a) advise each other of any information necessary for the application of this Agreement or of the respective legislation of the Parties concerning all matters within their area of competence arising under this Agreement or under those laws;
(b) assist one another in relation to the determination of any benefit under this Agreement or the respective legislation within the limits of and according to their own laws; and

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

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

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

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

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

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

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

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

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

**ARTICLE 28**

Administrative Arrangements

The Competent Authorities of the Parties shall make whatever administrative arrangements are necessary in order to implement this Agreement.
ARTICLE 29
Resolution of difficulties
1. The Competent Authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
2. The Parties shall consult promptly at the request of either Party concerning matters which have not been resolved by the Competent Authorities in accordance with paragraph 1.

ARTICLE 30
Review of Agreement
Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the territory of the Party to which that request was made.

PART VI– TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 31
Transitional Provisions
Where, on the date on which this Agreement enters into force, a person:
(a) is in receipt of a benefit by virtue of the previous Agreement; or
(b) is qualified to receive a benefit by virtue of the previous Agreement and, where a claim for that benefit is required, has claimed that benefit,
no provision of this Agreement shall affect that person’s qualification to receive that benefit.

ARTICLE 32
Entry into force
1. This Agreement shall enter into force on the first day of the second month following that in which the Parties notify each other through the diplomatic channel that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalised.
2. Subject to the provisions of Article 31, the previous Agreement shall terminate on entry into force of this Agreement.
ARTICLE 33
Termination

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

2. In the event of termination, this Agreement shall continue to have effect in relation to all persons who:
   (a) at the date on which termination takes effect, are in receipt of benefits; or
   (b) prior to that date have lodged claims for, and would be entitled to receive, benefits,
   by virtue of this Agreement or the Agreement signed on 30 April 1991 or
   (c) immediately before the date of termination are subject only to the legislation of one Party by virtue of paragraph 2 or 4 of Article 12 provided that the employee continues to satisfy the criteria of that paragraph.

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

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

FOR AUSTRALIA: FOR THE REPUBLIC OF PORTUGAL:

JANET GARDINER JOSÉ SIMÕES DE ALMEIDA
Part A

AGREEMENT BETWEEN AUSTRALIA AND THE REPUBLIC OF AUSTRIA ON SOCIAL SECURITY

AUSTRALIA AND THE REPUBLIC OF AUSTRIA,

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

And

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

Have agreed as follows:

PART I—INTERPRETATION AND SCOPE

GENERAL PROVISIONS

ARTICLE 1

Interpretation

1. In this Agreement:

(a) “national” means, in relation to Australia, an Australian citizen; and, in relation to Austria, an Austrian citizen;

(b) “legislation” means, in relation to Australia, the law specified in subparagraph 1(a) of Article 2; and, in relation to Austria, the laws, regulations and statutory instruments which relate to the branches of social security specified in subparagraph 1(b) of Article 2;

(c) “competent authority” means in relation to Australia, the Secretary to the Department of Social Security; and, in relation to Austria, the Federal Minister responsible for the application of the legislation specified in subparagraph 1(b) of Article 2;
(d) “institution” means, in relation to Australia, the Department of Social Security; and, in relation to Austria, the institution responsible for the application of the Austrian legislation;

(e) “competent institution” means, in relation to Australia, the Department of Social Security; and, in relation to Austria, the institution competent under the Austrian legislation to deal with the matter in question;

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

(g) “period of insurance in Austria” means a period of insurance defined as such in the Austrian legislation;

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

(i) “carer pension” means, in relation to Australia, a carer pension payable to a partner under the legislation of Australia;

(j) “widowed person” means, in relation to Australia, a person who:

(i) stops being a married person or becomes a single person because of the death of the person’s husband or wife; or

(ii) is a class B widow because of the death of her husband or because she is a dependent female,

but does not include a person who has a new partner;

(k) “refugee” means a person defined as a refugee in Article 1 of the Convention relating to the Status of Refugees, dated 28 July 1951, and the Protocol to that Convention, dated 31 January 1967;

(l) “stateless person” means a person defined as a stateless person in Article 1 of the Convention relating to the Status of Stateless Persons, dated 28 September 1954.
2. In the application of this Agreement, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it by the legislation of either Party.

ARTICLE 2

Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to:

(a) in relation to Australia: the Social Security Act 1991 insofar as the Act provides for, applies to or affects:

(i) age pensions,
(ii) invalid pensions,
(iii) wife pensions,
(iv) carer pensions; and
(v) benefits payable to widowed persons; and

(b) in relation to Austria the legislation concerning pension insurance with the exception of the insurance for notaries.

2. Except as otherwise provided in paragraph 3 this Agreement shall also apply to any legislation which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph 1.

3. Notwithstanding the provisions of paragraph 1:

(a) the legislation of Australia shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security; and

(b) this Agreement shall not affect any other agreement on social security which Austria has concluded with a third State, except as it contains provisions relating to the apportionment of insurance burdens.
ARTICLE 3

Personal Scope

This Agreement shall apply without any restriction based on nationality to any person who:

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

and where applicable, to any other person with respect to the rights he or she derives from such a person described in subparagraph (a) or (b).

ARTICLE 4

Equality of Treatment

1. Unless otherwise provided in this Agreement, nationals of one Party shall, in the application of the legislation of the other Party, receive equal treatment with the nationals of that other Party.

2. Benefits under the legislation of one Party shall be granted to nationals of the other Party resident outside the territories of both Parties, under the same conditions and to the same extent as they are granted to the nationals of the first party who reside outside the territories of the Parties.

3. Paragraph 1 shall not apply to the provisions of the Austrian legislation concerning:

(a) the participation of insured persons and employers in the administration of institutions and associations as well as adjudication in the field of social security;
(b) the apportionment of insurance burdens resulting from agreements with third States; or
(c) the insurance of persons employed at a diplomatic mission or consular post of Austria in a third State or by a member of such a mission or post.

4. Paragraph 1 shall apply with regard to the provisions of Austrian legislation concerning the taking into account of periods of war service.
and of periods considered as such only to Australian nationals who were Austrian nationals immediately before 13 March 1938.

ARTICLE 5

Equivalence of Territories

1. Unless otherwise provided in this Agreement any provision of the legislation of a Party under which qualification for or payment of a benefit is dependent on a person being a resident of, and/or present in the territory of that Party shall not apply to nationals of either Party, refugees or stateless persons, or other persons who derive rights from the foregoing, who are resident in the territory of either Party and present in the territory of either Party.

2. Benefits of a Party are payable at the request of the beneficiary in the territory of the other Party.

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

4. In relation to Australia:

   (a) Paragraph 1 shall apply without regard to nationality.
   (b) Paragraph 1 shall not apply to a claimant for a wife pension or carer pension who has never been an Australian resident or to rental allowance.
   (c) Where qualification for an Australian benefit is subject to limitations as to time, then references to Australia in those limitations shall be read also as references to the territory of Austria.
   (d) Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for an Australian benefit except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged but:

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

(ii) is in Australia, or in the territory of Austria or that third State,

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

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

PART II—PROVISIONS CONCERNING AUSTRALIAN BENEFITS

ARTICLE 6

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has, without the application of this Agreement, accumulated:

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

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

and has accumulated a period of insurance in Austria, then for the purposes of a claim for that Australian benefit, that period of insurance in Austria shall be deemed, only for the purposes of this Article for meeting any period required for qualification for that benefit set out in the legislation of Australia, to be a period in which that person was an Australian resident.

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

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

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

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

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

4. The minimum period of residence in Australia to be taken into account for the purposes of paragraph 1 shall be as follows:

(a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period shall be twelve months of which at least six months must be continuous; and

(b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum.

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

ARTICLE 7

1. Subject to paragraph 2, where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside the territory of Australia, the rate of that benefit shall be determined according to the legislation of Australia but when assessing the income of that person for the purposes of calculating the rate of the Australian benefit only a proportion of any Austrian benefit which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of Australian working life residence (not
2. A person referred to in paragraph 1 shall only be entitled to receive the concessional assessment of income described in that paragraph for any period during which the rate of that person’s Australian benefit is proportionalised under the legislation of Australia.

3. Where an Australian benefit is payable by virtue of this Agreement or otherwise to a person who is in Austria, any compensatory supplement or social assistance and similar means-tested payment paid by Austria to that person shall be disregarded by Australia in computing that person’s income for the purposes of the legislation of Australia or the application of this Agreement.

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

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

5. Where the rate of a benefit calculated in accordance with paragraph 4 is less than the rate of that benefit which would be payable under paragraphs 1, 2 and 3 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.

6. Where a married person is, or both that person and his or her partner are, in receipt of an Austrian benefit or benefits, each of them shall be deemed, for the purposes of paragraph 4 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.
7. For the purposes of paragraph 5, a comparison of the rates of the benefits shall be made as at:

(a) the date of the first pension pay day occurring after the date from which the benefit is payable; and
(b) each anniversary of that pension pay day for so long as the person concerned is entitled to the benefit;

using, in that comparison, the number of months of the period of Australian working life residence accumulated by the person at the date as at which the comparison is made.

ARTICLE 8

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

PART III—PROVISIONS CONCERNING AUSTRIAN BENEFITS

ARTICLE 9

If a person has completed periods of insurance in Austria and periods of Australian working life residence, those periods, insofar as they do not overlap, shall be added together for the purpose of qualification for an Austrian benefit.

ARTICLE 10

1. If a person who has completed periods of insurance in Austria and periods of Australian working life residence, or the survivor of such a person, is claiming a benefit, the competent institution for Austria shall determine the amount of the benefit in the following manner:

(a) the institution shall determine, in accordance with the Austrian legislation, whether the person concerned has an entitlement to a benefit by adding together the periods as provided in Article 9;
Schedule 10  Austria

(b) if entitlement to a benefit is determined to exist, the institution shall first calculate the theoretical amount of the benefit which would be payable if all the periods completed under the legislation of both Parties had been completed exclusively under the Austrian legislation; in cases where the amount of the benefit is independent of the duration of the period of insurance, this amount shall be taken to be the theoretical amount; and

(c) the institution shall then calculate the partial benefit payable on the basis of the amount calculated in accordance with the provisions of subparagraph (b) in proportion to the ratio between the duration of the periods of insurance to be taken into consideration under the Austrian legislation and the total duration of the periods to be taken into consideration under the legislation of both Parties.

2. Where the periods of insurance to be taken into consideration under the Austrian legislation for the purpose of calculating the amount of a benefit are in aggregate less than twelve months, no benefit under that legislation shall be paid. However, the preceding sentence shall not apply if the entitlement to that benefit has been acquired under the Austrian legislation exclusively on the basis of periods of insurance completed under that legislation.

ARTICLE 11

The competent Austrian institution shall apply Articles 9 and 10 according to the following rules:

1. In determining the institution responsible for paying a benefit, only periods of insurance in Austria shall be taken into consideration.

2. Periods of Australian working life residence, during which the person concerned was employed or self-employed, shall be treated as periods of contributions.

3. Articles 9 and 10 shall apply neither to the conditions of entitlement to nor to the payment of the miners’ long service allowance under the miners’ pension insurance.

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4. For the application of paragraph 1 of Article 10, the following shall apply:

(a) periods during which the insured person has been entitled to an age pension or invalid pension under the legislation of Australia shall be treated as if they were neutral periods;
(b) the basis of assessment shall be determined exclusively on periods of insurance in Austria;
(c) the contributions for supplementary insurance as well as the miners’ supplementary benefit, the helpless person’s allowance and the compensatory supplement shall be disregarded.

5. For the application of subparagraphs 1(b) and (c) of Article 10, overlapping periods under the legislation of the two Parties shall be taken into consideration as if they did not overlap.

6. If, for the application of subparagraph 1(c) of Article 10, the total duration of the periods to be taken into consideration under the legislation of both Parties exceeds the maximum number of months of insurance specified under the Austrian legislation for the calculation of the rate of increments, the partial pension payable shall be calculated in proportion to the ratio between the duration of the periods of insurance to be taken into consideration under the Austrian legislation and the above-mentioned maximum number of months of insurance.

7. For the calculation of the helpless person’s allowance, subparagraphs 1(b) and (c) of Article 10 shall apply; Article 13 shall apply accordingly.

8. The amount calculated according to subparagraph 1(c) of Article 10 shall be increased, where applicable, by the increments for contributions for supplementary insurance as well as the miners’ supplementary benefit, the helpless person’s allowance and the compensatory supplement.

9. If the award of benefits under the miners’ pension insurance depends on the completion of essentially mining activities, within the meaning of the Austrian legislation, in specific undertakings, then only those periods of Australian working life residence during which the person was employed in a similar occupation in similar undertakings shall be taken into consideration.
10. The special payments shall be payable in the same amount as the Austrian partial benefit; Article 13 shall apply accordingly.

ARTICLE 12

1. Where entitlement to a benefit exists under the Austrian legislation without the application of Article 9, the competent Austrian institution shall pay the pension which would be payable exclusively on the basis of the periods of insurance to be taken into consideration under that legislation, provided there is no entitlement to a corresponding benefit under the legislation of Australia.

2. The pension determined in accordance with paragraph 1 shall be recalculated in accordance with the provisions of Article 10 as soon as entitlement arises to a corresponding benefit under the legislation of Australia. This recalculation shall have effect from the date on which the benefit under the legislation of Australia becomes payable. The irrevocability of previous decisions shall not prevent this recalculation.

ARTICLE 13

If a person is entitled to a benefit under the Austrian legislation without the application of Article 9, and if such a benefit would be greater than the total of the Austrian benefit calculated in accordance with subparagraph 1(c) of Article 10 and the corresponding Australian benefit, the competent Austrian institution shall pay, as the partial benefit, its benefit so calculated increased by the difference between such total and the benefit which would be payable if the Austrian legislation alone were applied.

PART IV—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 14

Lodgement of documents

1. The date on which a claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Party is lodged with an authority, institution or other competent body of the other Party shall be treated, for all purposes concerning the matter to
which it relates, as the date of lodgement of that document with an authority, institution or other competent body of the first Party.

2. Any claim for a benefit under the legislation of a Party shall be considered to be a claim for the corresponding benefit under the legislation of the other Party for which the applicant may be qualified if the applicant provides information at the time of claim indicating that the person on whose record benefits are claimed has completed relevant periods of residence or of insurance under the legislation of the other Party and:

(a) the claim is lodged with the institution of the other Party; or
(b) the claim is lodged with the institution of the first Party and that institution sends the claim within three months of its lodgement with that institution to the competent institution of the other Party.

3. In the case to which paragraphs 1 and 2 of this Article apply, the body to which the submission has been made shall forward the claim, notice or appeal without delay to the corresponding competent body of the other Party.

ARTICLE 15

Advance Payments and Overpayments

1. Where an Austrian institution has made an advance payment to a person for any period and arrears of a corresponding benefit become payable for the same period under the legislation of Australia, the competent institution of Australia shall deduct from those arrears the amount paid by way of advance payment and shall transfer the amount so deducted to the Austrian institution. Where an Austrian institution has overpaid a benefit for any period for which the competent institution of Australia afterwards becomes liable to pay a corresponding benefit, the overpayment shall be regarded, for the purpose of the first sentence, as an advance payment.

2. Where

(a) an Austrian benefit is paid or payable to a person in respect of a past period;
(b) for all or part of that period, an Australian benefit has been paid to that person; and
(c) the amount of the Australian benefit would have been reduced had the Austrian benefit been paid during that period;

then

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

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

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

ARTICLE 16

Payment of Benefits

1. The benefit-paying institution of a Party may discharge its obligations under this Agreement in the national currency of that Party.

2. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party without deduction for administrative fees and charges.
ARTICLE 17

Administrative Arrangements and Mutual Assistance

1. The competent authorities of the Parties shall, by means of an Arrangement, establish the administrative measures necessary for the application of this Agreement.

2. The competent authorities shall inform each other of laws that amend, supplement or replace the legislation of their respective Parties.

3. The competent authorities and institutions of the Parties shall assist each other, including by the communication of any information, in applying the legislation specified in Article 2 and this Agreement, as if they were applying their own legislation. With the exception of cash expenditures relating thereto, such assistance shall be provided free of charge.

4. The laws of a Party concerning confidentiality shall apply to any information about an individual which is transmitted in accordance with this Agreement to that Party by the other Party. Such information shall be used only for purposes of applying this Agreement or the legislation of a Party.

5. The competent authorities of the Parties shall, in order to facilitate the application of this Agreement, particularly for the creation of a simple and fast liaison between the institutions concerned, establish liaison agencies.

6. The institutions and the competent authority of one Party may not reject claims or other documents submitted to them by reason only of the fact that they are written in an official language of the other Party.

7. If the competent institution of one Party requires an applicant or beneficiary who lives in the territory of the other Party to undergo a medical examination, such examination shall, at the request of that institution, be arranged or carried out by the institution of the latter Party at its expense.
ARTICLE 18

Exemption from Taxes and from Authentication

1. Any exemption or reduction provided for in the legislation of one Party for taxes, stamp duty, legal dues or registration fees for certificates or documents which have to be submitted for the application of this legislation shall be extended also to the respective certificates or documents which must be submitted for the application of this Agreement or the legislation of the other Party.

2. Documents and certificates of any kind which must be submitted for the application of this Agreement shall not require authentication.

ARTICLE 19

Resolution of Difficulties

1. Disagreements arising in connection with the application of this Agreement shall, as far as possible, be resolved by mutual agreement between the competent authorities of the Parties.

2. If any such disagreement has not been resolved within a period of six months, either Party may submit the matter to binding arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Parties.

PART V—TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 20

Transitional Provisions

1. This Agreement shall not establish any entitlement to payment of a benefit for a period before its entry into force.

2. In determining entitlement to a benefit under this Agreement, periods of insurance in Austria and periods as an Australian resident completed before the entry into force of this Agreement shall also be taken into consideration.

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3. Subject to paragraph 1, this Agreement shall also apply to contingencies which are relevant to an entitlement which occurred before its entry into force, insofar as previously determined entitlements have not been settled by lump-sum payments. If in such cases the claim for a benefit which is payable only by virtue of this Agreement is submitted within one year from the date of entry into force of this Agreement, the benefit shall be determined and paid from that date; otherwise the benefit shall be paid from the date determined under the legislation of each Party.

4. Subject to the legislation of either Party this Agreement shall not result in any reduction in the amount of any benefit to which entitlement was established prior to its entry into force.

ARTICLE 21

Protection of Existing Rights

This Agreement shall not affect any existing rights under Austrian legislation of any person who has suffered disadvantages in the field of social security because of political or religious reasons or by reason of descent.

ARTICLE 22

Entry into Force and Termination

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

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of twelve months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of the other Party to terminate this Agreement.

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

by virtue of this Agreement.

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

DONE in two copies at Canberra this first day of April, 1992 in the English and German languages, each text being equally authoritative.

FOR AUSTRALIA: FOR THE REPUBLIC OF AUSTRIA:

NEAL BLEWETT WALTER HIETSCH

[Signatures omitted]
Part B

Protocol to the Agreement between Australia and the Republic of Austria on Social Security

Australia and the Republic of Austria

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

Article I

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

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

Article II

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

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

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

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

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

(d) Subparagraph 1(i) of Article 1 of the Agreement shall be deleted and replaced by the following:
“(i) “carer payment” means a carer payment payable to a person who is caring for that person’s partner who is in receipt of an Australian disability support pension or age pension;”

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

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

2. Subparagraph 1(a) of Article 2 of the Agreement shall be deleted and replaced by the following:

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

(i) age pensions,
(ii) disability support pensions,
(iii) wife pensions,
(iv) carer payments,
(v) pensions payable to widowed persons, and
(vi) 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.

(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.

**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:  For the Republic of Austria:
Max Hughes  Christian Prosl
AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA AND
THE REPUBLIC OF CYPRUS

AUSTRALIA AND THE REPUBLIC OF CYPRUS,

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

Resolved to coordinate their social security systems;

Have agreed as follows:

PART I—GENERAL PROVISIONS

ARTICLE 1

Definitions

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

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

   (b) “carer pension” means a carer pension payable to the partner of a person who is in receipt of a disability support pension for the severely disabled or an age pension where that partner is legally married to that person;

   (c) “Competent Authority” means;

      in relation to Australia:
      the Secretary to the Department of Social Security; and,
in relation to Cyprus:
the Minister of Labour and Social Insurance;

(d) “Competent Institution” means;

in relation to Australia:
the Department of Social Security; and,
in relation to Cyprus:
the Department of Social Insurance Services, Ministry
of Labour and Social Insurance;

(e) “legislation” means the laws specified in Article 2;

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

(g) “period of insurance” means a period for which contributions
have been paid or credited or a period of paid or credited
insurable earnings under the legislation of Cyprus;

(h) “territory” means;

in relation to Australia:
Australia as defined in the legislation of Australia; and
in relation to Cyprus:
the island of Cyprus;

(i) “welfare benefit” means, in relation to Cyprus, any benefit
payable under the Public Assistance Law of 1991 and any law
to provide a similar means tested benefit from public funds that
subsequently amends, supplements or replaces it and any rent
allowance payable out of the Fund established under the Rent
Control Laws of 1983 and 1991 and any law to provide a
similar means-tested rent allowance from public funds that
subsequently amends, supplements or replaces them;

and

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

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

ARTICLE 2

Legislative Scope

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

   (a) in relation to Australia: the Social Security Act 1991 in so far as the Act provides for, applies to or affects the following benefits:

      (i) age pension;
      (ii) disability support pension for the severely disabled;
      (iii) pensions payable to widows;
      (iv) widowed person allowance; and
      (v) carer pension; and

   (b) in relation to Cyprus: the Social Insurance Laws of 1980 to 1990 in so far as the Laws provide for, apply to or affect social insurance benefits for:

      (i) age;
      (ii) invalidity and work-related disablement;
      (iii) survivorship; and
      (iv) funerals.

2. Notwithstanding the provisions of paragraph 1, neither the legislation of Australia nor the legislation of Cyprus shall include any laws made at any time for the purpose of giving effect to any agreement on Social Security.

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

Personal Scope

This Agreement shall apply to any person who:

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

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

ARTICLE 4

Equality of Treatment

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

ARTICLE 5

Application of the Legislation of Cyprus

1. Subject to the following paragraphs, where a person to whom this Agreement applies is gainfully occupied in the territory of Cyprus the person’s liability to be insured under the legislation of Cyprus shall be determined under that legislation, even if the person’s place of residence and/or the employer’s place of business is in Australia.

2. Where a person insured under the legislation of Cyprus is sent by an employer to work temporarily in Australia the person shall continue to be subject to the legislation of Cyprus during the first 24 months of employment in Australia.
3. A person who is employed as a member of the crew of a seagoing ship flying the Cyprus flag shall be subject to the legislation of Cyprus if the person is ordinarily resident in Cyprus.

4. Subject to the provisions of paragraph 5, a person employed by the Government or other public corporation of Cyprus sent by that Government or corporation to work in Australia shall continue to be subject to the legislation of Cyprus as if employed in Cyprus. A person employed by the Government or other public corporation of Australia in Cyprus shall be subject to the legislation of Cyprus if ordinarily a resident of Cyprus.

5. This Article does not apply to any person who falls within the scope of the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

6. The Competent Authorities of the two Parties may provide, by agreement with one another, exceptions to the provisions of this Article where this is in the interest of persons affected thereby.

7. Where in accordance with the provisions of this Article a person is insured under the legislation of Cyprus while gainfully occupied in Australia, that legislation shall apply to that person as if he or she were gainfully occupied in Cyprus.

**PART II—PROVISIONS RELATING TO BENEFITS**

**AUSTRALIAN BENEFITS**

**ARTICLE 6**

Residence or Presence in Cyprus or a Third State

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

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

(b) is in Australia, or the territory of Cyprus or that third State,

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

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

**ARTICLE 7**

**Partner related Australian Benefits**

A person who receives from Australia any Australian pension, benefit or allowance under the social security laws of Australia due to the fact that the partner of that person receives, by virtue of this Agreement, an Australian benefit, shall be deemed to be receiving that pension, benefit or allowance by virtue of this Agreement but shall cease to qualify for that pension, benefit or allowance, if he or she is not physically present in Australia but, when that person is receiving a carer pension, he or she shall not cease to qualify for that pension while he or she is physically present in Cyprus.

**ARTICLE 8**

**Totalisation for Australia**

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

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

(b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 5 for that person; and

(c) a period of insurance;

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

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

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

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

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

3. For the purposes of converting a person’s period of insurance to a period when that person was an Australian resident:

(a) each week of insurance completed before 6 October 1980 under the legislation of Cyprus shall be treated as a week when that person was an Australian resident under the legislation of Australia; and

(b) the insurable earnings for any period of insurance completed from 6 October 1980 under the legislation of Cyprus shall be divided by the weekly amount of the basic insurable earnings applicable in the relevant contribution year. The figure so calculated, subject to the maximum number of weeks during which the person was subject to that legislation in that year, shall be treated as representing the number of weeks in the insurance period. Each week shall be treated as equivalent to one week when that person was an Australian resident.

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

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

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*Social Security (International Agreements) Act 1999* 259
(a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least six months must be continuous; and

(b) for the purposes of an Australian benefit that is payable to an Australian resident no minimum period shall be required.

ARTICLE 9
Calculation of Australian Benefits

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

2. Only a person receiving a proportionalised Australian benefit under the legislation of Australia shall be entitled to receive the concessional assessment of income described in paragraph 1.

3. Where an Australian benefit is payable, whether payable by virtue of this Agreement or otherwise, to a person who is a resident of Cyprus, Australia shall disregard, when assessing the income of that person, any welfare benefit paid to that person by Cyprus.

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

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

(b) deducting the amount of the Cyprus benefit received by that person from the maximum rate of that Australian benefit; and
(c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the legislation of Australia, using as the person’s income the amount calculated under subparagraph (a).

5. Where a member of a couple is, or both that member and his or her partner are, in receipt of a Cyprus benefit or benefits, each of them shall be deemed, for the purpose of paragraph 4 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.

6. If a person would receive an Australian benefit except for the operation of paragraph 4 or except for that person’s failure to claim the benefit, then for the purposes of a claim by that person’s partner for a payment under the legislation of Australia that person shall be deemed to receive that benefit.

7. The reference in paragraph 6 to a payment under the legislation of Australia to the partner of a person is a reference to a payment of any pension, benefit or allowance payable under the social security laws of Australia and whether payable by virtue of this Agreement or otherwise.

**PART III—PROVISIONS RELATING TO CYPRUS BENEFITS**

**ARTICLE 10**

Totalisation for Cyprus

1. Subject to paragraph 4, if a person is not entitled to benefit on the basis of insurance periods completed under the legislation of Cyprus alone entitlement for that benefit shall be determined by totalising these periods with periods of Australian working life residence to the extent necessary for entitlement to benefit.

2. In applying the provisions of paragraph 1, no account shall be taken of any period of working life residence in Australia completed prior to 7 January 1957.

3. For the purposes of this Article where a period of insurance and a period of Australian working life residence coincide, the period of
coincidence shall be taken into account once only as a period of insurance.

4. Paragraph 1 shall not apply if the period of insurance is less than 52 weeks, except where the required period of insurance for entitlement to a benefit under the legislation of Cyprus is less than 52 weeks.

5. For the purpose of converting a period of Australian working life residence into a period of insurance under the legislation of Cyprus, a person shall be treated for each week of working life residence in Australia as having insurable earnings under the legislation of Cyprus equal to the weekly amount of basic insurable earnings.

ARTICLE 11

Calculation of Cyprus Benefits

1. Subject to paragraph 2, the amount of benefit payable under the provisions of Article 10 shall be determined as follows:

   (a) the Competent Institution of Cyprus shall calculate the theoretical basic benefit that would be payable if the periods of insurance completed under the legislation of Cyprus and the periods of Australian working life residence, totalised as provided in paragraph 1 of Article 10, had been periods of insurance under the legislation of Cyprus alone;

   (b) it shall then prorate the theoretical basic benefit so calculated by the fraction which represents the ratio of the insurance periods completed under the legislation of Cyprus in relation to the total of the insurance periods completed under that legislation and the periods of Australian working life residence which are taken into account; and

   (c) the amount of the supplementary benefit shall be determined exclusively on the basis of periods of insurance completed under the legislation of Cyprus.

2. The amount of the funeral benefit payable under the legislation of Cyprus shall be calculated as if the periods of residence, which are taken into account as provided in paragraph 1 of Article 10, were periods of insurance under the legislation of Cyprus alone.
ARTICLE 12

Work-related disablement

1. Subject to paragraph 2, pensions for work-related disablement under the legislation of Cyprus shall be paid by virtue of this agreement in respect of disablement which occurs while a person is insured under that legislation and employed in an occupation which is valid for the purposes of that legislation.

2. The rate of a pension for work-related disablement paid by virtue of this Agreement shall be calculated as if the impairment which qualified a person for a benefit under the legislation of Australia had occurred under the legislation of Cyprus.

PART IV—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 13

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of the other Party in accordance with the Administrative Arrangement made pursuant to Article 17 at any time after the Agreement enters into force.

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

3. In relation to Australia, the reference in this Article to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by the social security laws of Australia.
ARTICLE 14

Determination of Claims

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

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

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

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but shall never be earlier than the date on which this Agreement enters into force and a funeral grant under the legislation of Cyprus shall not be made if the relevant death occurred before this Agreement enters into force.

3. Where:

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

that first mentioned benefit shall not be paid or continue to be paid until a claim is duly lodged for payment of the benefit from the other Party or if the claim for the other Party’s benefit is not actively pursued.

4. Where:

(a) a benefit is paid or payable by a Party to a person in respect of a past period; and
(b) for all or part of that period, the other Party has paid to that person a benefit under its legislation; and
(c) the amount of the benefit paid by that other Party would have been reduced had the benefit paid or payable by the first Party been paid during that period;

then

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

(e) the other Party may determine that the amount or any part of that debt may be deducted from future payments of a benefit payable by that Party to that person.

5. Where the first Party has not yet paid the benefit described in subparagraph 4(a) to the person:

(a) that Party shall, at the request of the other Party, pay the amount of the benefit necessary to meet the debt described in subparagraph 4(d) to the other Party and shall pay any excess to the person; and

(b) any shortfall may be recovered by the other Party under subparagraph 4(e).

6. The Competent Institution receiving a request under paragraph 5 shall transfer the amount of the debt to the Competent Institution making the request.

7. A reference in paragraphs 3, 4 and 5 to a benefit, in relation to Australia, means a pension, benefit or allowance payable under the social security laws of Australia and, in relation to Cyprus, means any pension, benefit or allowance payable under the social insurance laws of Cyprus.

ARTICLE 15

Payment of Benefits

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

3. Subject to Article 7, where qualification for a benefit of one Party is subject to limitations as to time, then references to that Party in those limitations shall be read also as references to the territory of the other Party when that benefit is payable by virtue of this Agreement.

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

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

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

ARTICLE 16

Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement:
(a) shall communicate to each other any information necessary for the application of this Agreement;
(b) shall lend their good offices and furnish assistance to one another, including the communication to each other of any necessary information, with regard to the determination or payment of any benefit under this Agreement or under the social security laws of either Party as if the matter involved the application of their own legislation;
(c) shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation in so far as these changes affect the application of this Agreement; and
(d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 17.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangement made pursuant to Article 17.

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

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

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

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

ARTICLE 17

Administrative Arrangement

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

ARTICLE 18

Resolution of difficulties

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

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

ARTICLE 19

Review of Agreement

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

ARTICLE 20

Entry Into Force and Termination

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

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

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

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

   by virtue of this Agreement.

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

DONE in two copies at Nicosia this twelfth day of May 1992, in the English and Greek languages.

DAVID SIMMONS
FOR AUSTRALIA

I ARISTIDOU
FOR THE REPUBLIC OF CYPRUS
AGREEMENT BETWEEN AUSTRALIA AND THE KINGDOM OF DENMARK ON SOCIAL SECURITY

AUSTRALIA AND THE KINGDOM OF DENMARK,

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

RESOLVED to co-ordinate their social security systems;

HAVE AGREED as follows:

PART I—GENERAL PROVISIONS

ARTICLE 1
Definitions

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

   (a) “territory” means:
       in relation to Australia:
       Australia as defined in the legislation of Australia; and
       in relation to the Kingdom of Denmark:
       its national territory, with the exception of Greenland and
       the Faroe Islands;

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

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

Social Security (International Agreements) Act 1999
that is payable in addition to that benefit, pension or allowance to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

(d) “Competent Authority” means;

in relation to Australia:
    the Secretary to the Department responsible for the application of the legislation in subparagraph 1(a) of Article 2; and

in relation to Denmark:
    the Minister of Social Affairs;

(e) “Competent Institution” means;

in relation to Australia:
    the institution responsible for the administration of the legislation; and

in relation to Denmark:
    the institution responsible for providing benefits;

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

(g) “residence” means, as regards Denmark, habitual residence which is lawfully established; and

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

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

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

(a) in relation to Australia: the Social Security Act 1991 in so far as the Act provides for, applies to or affects the following benefits:
   (i) age pension;
   (ii) disability support pension for severely disabled persons; and
   (iii) parenting payment for widowed persons; and

(b) in relation to Denmark:
   (i) the Social Pensions Act and the regulations made thereunder; and
   (ii) the Labour Market Supplementary Pension (ATP) Act and the regulations made thereunder.

2. Notwithstanding the provisions of paragraph 1, the legislation of Australia shall not include any laws made at any time for the purpose of giving effect to any agreement on Social Security.

3. This Agreement shall apply to laws or regulations which extend the existing legislation to other categories of beneficiaries only if no objection on the part of either Party has been communicated to the other Party within three months of notification of such laws or regulations.

ARTICLE 3
Personal Scope

This Agreement shall apply to any person who:

(a) in the case of Australia:
   (i) is or has been an Australian resident; or
   (ii) is or has been a Danish resident;

(b) in the case of Denmark is an Australian or Danish national,

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and, where applicable, to other persons in regard to the rights derived from the persons referred to in paragraphs (a) and (b) above.

**PART II—EQUALITY OF TREATMENT AND EXPORT OF BENEFITS**

**ARTICLE 4**

Equality of Treatment

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

**ARTICLE 5**

Payment of Benefits Abroad

1. Subject to other provisions of this Agreement, benefits of one Party are also payable in the territory of the other Party.

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

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

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

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

6. A pension under the Social Pensions Act shall be payable to an Australian national resident in the territory of Australia only if the person concerned has been an employed or self-employed person in the territory of Denmark for a total of not less than 12 months of the qualifying period provided for in the Social Pensions Act.

7. For the purpose of paragraph 6 of this article, the following provisions shall apply:

   (a) where membership contributions have been paid for one year in respect of a person covered by the Labour Market Supplementary Pension (ATP) Act as a result of pursuing an activity as an employed person, the person concerned shall be regarded as having completed a period of employment of 12 months in the territory of Denmark;

   (b) where a person establishes that he or she was employed in the territory of Denmark for any period before 1 April 1964, that period shall also be accepted; and

   (c) where a person establishes that he or she was self-employed in the territory of Denmark for any period, that period shall also be accepted.

8. Where the conditions specified in paragraph 6 of this Article have not been met, a pension awarded to an Australian national residing in the territory of Denmark shall nevertheless continue to be payable in the territory of Australia if, during the qualifying period prescribed in the Social Pensions Act, that person has resided in the territory of Denmark for not less than ten years, of which at least five years are immediately preceding application for the pension.

9. The following supplements, allowances and benefits under the Social Pensions Act, shall be payable to a national of a Party resident outside the territory of Denmark only according to the provisions of that Act:

   (a) pensions supplement

   (b) personal allowance
(c) outside assistance allowance

(d) constant attendance allowance

(e) disability benefit.

10. Notwithstanding any other provision of this Agreement, periods of residence in the territory of Denmark prior to April 1, 1957 shall not be taken into account in the calculation of a benefit under the Social Pensions Act payable to an Australian national resident outside the territory of Denmark.

11. The rights under this Article shall not apply to rent assistance or pharmaceutical allowance.

PART III—PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 6
Residence or Presence in the Territory of Denmark

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

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

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

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

2. Paragraph 1 shall not apply to a person who is a claimant for a parenting payment.

ARTICLE 7
Totalisation for Australia

1. Subject to paragraph 3, where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:
and has accumulated a period of residence in Denmark, within the qualifying period specified in the Social Pensions Act, then for the purposes of a claim for that Australian benefit, that period of residence in Denmark shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia, to be a period in which that person was an Australian resident.

2. The minimum period to be taken into account for the purposes of subparagraph 1(b) shall be as follows:

   (a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period of Australian working life residence required shall be 1 year, of which at least 6 months shall be continuous; and

   (b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum is required.

3. Periods of Australian working life residence prior to April 1, 1957 and periods of residence in the territory of Denmark prior to April 1, 1957 shall not be taken into account for the purposes of this Article.

ARTICLE 8
Calculation of Australian Benefit

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

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

3. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who is residing in Denmark, Australia shall disregard, when assessing the income of that person, any personal allowance paid to that person under the Social Pensions Act of Denmark, and any other payments of a similar nature as mutually determined from time to time in letters exchanged between the Ministers respectively administering the legislation of Australia and Denmark.

4. As soon as it is practicable after the exchange of letters in which Danish payments are mutually determined for the purposes of paragraph 3, the Minister administering the legislation of Australia shall cause to be published in the Commonwealth of Australia Gazette a notice specifying such Danish payments.

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

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

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

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

6. Where a member of a couple is, or both that person and his or her partner are, in receipt of a Danish benefit or benefits, each of them shall be deemed, for the purpose of paragraph 5 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.
7. If a person would receive an Australian benefit except for the operation of paragraph 5 or except for that person’s failure to claim the benefit, then for the purposes of a claim by that person’s partner for a payment under the legislation of Australia that person shall be deemed to receive that benefit.

PART IV—PROVISIONS RELATING TO DANISH BENEFITS

ARTICLE 9
General Provisions Governing Residence

1. For the purposes of this Article, the provisions of the Danish legislation that require a person to be permanently resident in the territory of Denmark before that person can be entitled to benefits shall not apply to an Australian resident unless he or she is claiming an anticipatory pension for social reasons.

2. Australian nationals shall be entitled to an anticipatory pension provided that in the qualifying period laid down in the Social Pensions Act they have been physically and mentally capable of carrying on their normal occupation for a continuous period of residence of not less than 12 months in the territory of Denmark.

3. Entitlement to anticipatory pension awarded for social reasons in respect of Australian nationals shall be subject to the additional condition that they have been permanently resident in the territory of Denmark for a period of not less than 12 months immediately before the time of submission of the claim for pension and that the need for pension arose while they were resident in the territory of Denmark.

4. Notwithstanding Article 4 of this Agreement, a Danish national resident in the territory of Australia shall not be entitled to the award of an anticipatory pension for social reasons.

ARTICLE 10
Special Residence Requirements

The provisions laid down in the Social Pensions Act making periods of residence outside Denmark, for the purpose of training, equivalent to residence in the territory of Denmark in the calculation of the period of residence, shall, notwithstanding the provisions of Article 4, apply only to Danish nationals.
PART V—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 11
Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of the other Party in accordance with the Administrative Arrangement made pursuant to Article 14 at any time after the Agreement enters into force.

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

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

ARTICLE 12
Determination of Claims

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

   (a) a period as an Australian resident and a period of residence in Denmark; and

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

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

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

3. Where:

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

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

then

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

(e) the other Party may determine that the amount or any part of that debt may be deducted from future payments of a benefit payable by that Party to that person.

4. A reference in paragraph 3 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the social security laws of Australia and, in relation to Denmark, means any benefit as defined under the legislation of Denmark specified in subparagraph 1(b) of Article 2.

5. A claim submitted to a Competent Institution of a Party for a benefit of that Party shall also be regarded as a claim for a benefit of the other Party. The date of receipt of the claim by the first institution shall be regarded as the date on which the claim was received by the second institution.

ARTICLE 13
Exchange of Information and Mutual Assistance

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

(a) shall communicate to each other any information necessary for the application of this Agreement;

(b) shall lend their good offices and furnish assistance to one another, including the communication to each other of any necessary information, with regard to the determination or payment of any benefit under this Agreement or under the social

Social Security (International Agreements) Act 1999
security laws of either Party as if the matter involved the application of their own legislation;

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

(d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 14.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangement made pursuant to Article 14.

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

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

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

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

5. In the application of this Agreement, the Competent Authority and the Institutions of a Party may communicate with the other in the official language of that Party.
ARTICLE 14
Administrative Arrangement

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

ARTICLE 15
Resolution of Difficulties

1. The Parties shall interpret this Agreement in good faith in accordance with the ordinary meaning to be given to the terms of the Agreement in their context and in the light of its object and purpose except where this meaning may have been modified by a definition set out in Article 1.

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

ARTICLE 16
Review of the Agreement

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

PART VI—TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 17
Entry into Force and Termination

1. Subject to the social security laws of either Party, this Agreement shall not result in any reduction in the amount of any benefit to which entitlement was established prior to its entry into force.

2. This Agreement shall enter into force two months after an exchange of notes by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalised.

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

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

   (a) at the date of termination, are in receipt of benefits; or

   (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits, by virtue of this Agreement.

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

DONE in two copies at Canberra this first day of July, 1999, in the English and Danish languages, each text being equally authoritative.

FOR AUSTRALIA:          FOR THE KINGDOM OF DENMARK:

Jocelyn Newman           Kris Lund-Jensen
[Signatures omitted]