

# **Social Security Act 1991**

**Act No. 46 of 1991 as amended**

**VOLUME 10** includes: Schedules



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## **Schedule 1—Oath and Affirmation**

Section 1340

### OATH

I, \_\_\_\_\_, swear that I will faithfully and impartially perform the duties of the office of National Convener (or senior member or member) of the Social Security Appeals Tribunal without fear or favour, affection or ill-will. So help me God.

### AFFIRMATION

I, \_\_\_\_\_, solemnly and sincerely promise and declare that I will faithfully and impartially perform the duties of the office of National Convener (or senior member or member) of the Social Security Appeals Tribunal without fear or favour, affection or ill-will.

## **Schedule 1A—Savings and transitional provisions**

### **Part 1—General**

#### **1 Correspondence of pensions, benefits and allowances**

- (1) Subject to paragraph (2)(k), for the purposes of this Schedule, a pension, benefit or allowance under this Act and a pension, benefit or allowance under the 1947 Act that have the same name correspond to each other.
- (2) For the purposes of this Schedule:
  - (a) a wife's pension under the 1947 Act and a wife pension under this Act correspond to each other; and
  - (b) a carer's pension under the 1947 Act and a carer pension under this Act correspond to each other; and
  - (c) a sole parent's pension under the 1947 Act and a sole parent pension under this Act correspond to each other; and
  - (e) a class B widow's pension under the 1947 Act and a widow B pension under this Act correspond to each other; and
  - (f) an age pension under the 1947 Act payable because of section 26 of that Act and a special needs age pension under this Act correspond to each other; and
  - (g) an invalid pension under the 1947 Act payable because of section 29 of that Act and a special needs invalid pension under this Act correspond to each other; and
  - (h) a wife's pension under the 1947 Act payable because of subsection 37(2) of that Act and a special needs wife pension under this Act correspond to each other; and
  - (i) a sole parent's pension under the 1947 Act payable because of subsection 46(1) of that Act and a special needs sole parent pension under this Act correspond to each other; and
  - (j) a class B widow's pension under the 1947 Act payable because of subclause 4(1) of Schedule 1B to that Act and a

special needs widow B pension under this Act correspond to each other; and

- (k) a job search allowance under the 1947 Act and a job search allowance under this Act in respect of a person who has not turned 18 correspond to each other; and
  - (l) an unemployment benefit under the 1947 Act in respect of a person who has not been in receipt of an old benefit or old benefits for longer than 12 months and a job search allowance under this Act correspond to each other; and
  - (m) an unemployment benefit under the 1947 Act in respect of a person who has been in receipt of an old benefit or old benefits for longer than 12 months and a newstart allowance under this Act correspond to each other; and
  - (n) a widowed person allowance under the 1947 Act and a bereavement allowance under this Act correspond to each other.
- (3) In paragraphs (2)(l) and (m):

*old benefit*, in relation to a person, means:

- (a) an unemployment benefit under the 1947 Act; or
- (b) a job search allowance under the 1947 Act; or
- (c) in the case of a person who, but for the abolition of the allowance formerly paid by the Department of Employment, Education and Training and known as the Formal Training Allowance, would have paid that allowance on 1 July 1991—that allowance.

## **2 Correspondence of provisions**

- (1) If one provision of the 1947 Act and one provision of this Act have the same legal effect, the 2 provisions correspond to each other.
- (2) If:
  - (a) one provision of the 1947 Act has a particular legal effect in relation to a number of payment types; and

Clause 2A

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(b) a provision of this Act has that legal effect in relation to only one of those payment types;  
the provisions correspond to each other for the purposes of applying this Schedule to that payment type.

(3) In this clause:

*legal effect* includes conferring the power to issue an instrument.

*payment type* means a pension, benefit or allowance.

**2A References in other Acts and instruments to provisions of the 1947 Act**

A reference in:

(a) a provision of a law of the Commonwealth or a Territory enacted before 1 July 1991 (whether or not the provision has come into operation); or

(b) an instrument or document;

to a provision of the 1947 Act is to be construed as a reference to the corresponding provision of the 1991 Act.

**Part 2—Savings and Transitional Provisions**  
**Applicable on the Transition from the 1947**  
**Act to this Act**

**Division 4—Continuation of earlier savings provisions**

**21 Widow's pension—mental hospital patient partners (changes introduced on 1 November 1980)**

(2) If:

(a) immediately before 1 November 1980:

(i) a woman was receiving a widow's pension under the 1947 Act; and

(ii) the woman's husband was a mental hospital patient; and

(b) at all times since 1 November 1980, the woman's husband has continued to be a mental hospital patient; and

(c) the woman does not have an SPP child;

the woman is to be taken to satisfy paragraph 362(1)(c) of this Act (widow B pension).

(3) For the purposes of subclauses (1) and (2), if the woman's husband is absent from the mental hospital for a continuous period of 4 weeks or more, he is to be taken to cease to be a mental hospital patient at the end of the 4 week period that starts when the absence starts.

(4) If:

(a) subclause (1) or (2) applies to a woman; and

(b) the woman is qualified for a wife pension; and

(c) the rate at which a wife pension would be payable to the woman is higher than the rate at which a sole parent or widow B pension would be payable to the woman;

the following provisions apply:

(d) subclauses (1) and (2) do not prevent the grant to her of a wife pension;

(e) the grant of a wife pension to her may take effect on and from the date on which the woman became qualified for the wife pension at the higher rate;

- (f) if she is granted a wife pension, subclause (1) or (2) is to be taken to have ceased to apply to her on the day on which the grant of the wife pension takes effect.

**22 Benevolent homes (changes introduced on 1 January 1981)**

(1) If:

(a) immediately before 1 January 1981:

- (i) a person was receiving an age, invalid or class B widow pension under the 1947 Act; and
- (ii) the person was an inmate of a benevolent home; and
- (iii) the person's pension was being dealt with in accordance with section 50 or 80 of the 1947 Act; and

(b) at all times since 1 January 1981, the person has been an inmate of a benevolent home;

the following provisions apply to the person's pension in spite of anything in section 60, 113, 274 or 381 of this Act:

(c) the person is to be paid so much of the person's pension as does not exceed:

- (i) if the person is receiving rent assistance—\$1,164.80 per year; or
- (ii) if the person is not receiving rent assistance—\$1,112.80 per year; and

(d) the balance (if any) is to be paid to the person controlling the benevolent home for the maintenance of the pensioner in the home.

(2) Subclause (1) stops applying to the person's pension if the amount payable under that subclause to the person controlling the benevolent home equals or exceeds the pensioner contribution that would otherwise be payable to that person under section 60, 113, 274 or 381 of this Act.

**27 Rent assistance—boarders and lodgers (changes introduced on 13 June 1989)**

(1) If:

(a) immediately before 13 June 1989:

**Schedule 1A** Savings and transitional provisions

**Part 2** Savings and Transitional Provisions Applicable on the Transition from the 1947 Act to this Act

**Division 4** Continuation of earlier savings provisions

Clause 27

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- (i) a person was receiving a social security pension, a social security benefit or family allowance supplement under the 1947 Act; and
  - (ii) the person's pension, benefit or allowance rate included an amount by way of rent assistance in respect of payments made for board and lodging; and
- (b) at all times since 13 June 1989, the person:
- (i) has been receiving a social security pension, a social security benefit or family allowance supplement; and
  - (ii) has been a boarder;
- the amount by way of rent assistance included in the person's pension, benefit or allowance rate is not to fall below the floor amount.

(2) If:

- (a) a decision is made under the 1947 Act on or after 13 June 1989 that a person is entitled to rent assistance under that Act in respect of a period; and
  - (b) the period starts before 13 June 1989; and
  - (c) the period continued until at least 12 June 1989;
- the person is to be taken, for the purposes of this clause, to have been receiving rent assistance under that Act immediately before 13 June 1989.

(3) If:

- (a) immediately before 13 June 1989, a person was receiving rent assistance under or because of the Veterans' Entitlements Act in respect of payments for board and lodging; and
- (b) after that date, the person becomes entitled to be paid a social security pension, social security benefit or family allowance supplement under the 1947 Act or this Act; and
- (c) subsection 30(1) of the *Social Security and Veterans' Affairs Legislation Amendment Act 1988* had not ceased to apply to the person until the person became entitled to that pension, benefit or allowance or would not have ceased to apply to the person until then if the subsection had not been repealed; and
- (d) at all times since the person becomes entitled to that pension, benefit or allowance, the person:



- (i) has been receiving a social security pension, a social security benefit or family allowance supplement; and
  - (ii) has been a boarder;
- the amount of rent assistance included in the person's pension, benefit or allowance rate is not to fall below the person's floor amount.
- (3A) For the purposes of subclauses (1) and (3), the person's ***floor amount*** is the amount worked out using the formula:
- Preserved rent assistance – Post -1995 increase
- where:
- preserved rent assistance*** is the amount worked out under subclause (4).
- post-1995 increase*** is the sum of the increases in the amount of the maximum fortnightly rate of any of the following payments to the person after 19 March 1996 (whether or not the type or amount of payment payable to the person varies after that day because the person's circumstances change):
- (a) a social security benefit;
  - (b) a social security pension;
  - (c) family payment under this Act as previously in force;
  - (ca) family allowance;
  - (d) non-benefit parenting allowance;
  - (e) child disability allowance;
  - (ea) carer allowance;
  - (f) double orphan pension;
  - (g) mobility allowance;
  - (h) youth training allowance.
- (4) For the purposes of subclause (3A), the person's ***preserved rent assistance*** is the amount by way of rent assistance that would be included in the person's pension, benefit or allowance rate if:
- (a) that amount were calculated, subject to paragraph (b), under the 1947 Act as in force immediately before 13 June 1989; and
  - (b) the 1947 Act as in force at that time were modified as follows:

**Schedule 1A** Savings and transitional provisions

**Part 2** Savings and Transitional Provisions Applicable on the Transition from the 1947 Act to this Act

**Division 4** Continuation of earlier savings provisions

Clause 27

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- (i) the following paragraph applied instead of paragraph 36(1)(a):
  - “(a) the person pays, or is liable to pay, rent, other than government rent, at a rate exceeding \$1,040 per year.”;
- (ii) “the amount specified in paragraph (1)(a)” were substituted for “\$780” in paragraph 36(3)(a);
- (iii) “rent, other than Government rent, at a rate exceeding \$1,040” were substituted for “rent at a rate exceeding \$780” in paragraph 50(1)(a);
- (iv) the following paragraph applied instead of paragraph 50(2)(b):
  - “(b) the amount worked out using the formula:
$$0.5 \times \left[ \text{ARP} - \text{RT} \right]$$
where:  
**ARP** is the annual rent paid or payable by the person.  
**RT** is the amount specified in paragraph (1)(a).”;
- (v) “rent, other than Government rent, at a rate exceeding \$20” were substituted for “rent at a rate exceeding \$15” in paragraph 74(2)(c);
- (vi) “the amount specified in paragraph (c)” were substituted for “\$15” (last occurring) in subsection 74(2);
- (vii) “the threshold amount” were substituted for “\$15” in paragraphs (a) and (b) of the definition of *entitlement period* in subsection 120(1);
- (viii) the following definition were inserted in subsection 120(1):
  - “*threshold amount* means \$20.”;
- (ix) “rent, other than Government rent, paid or payable by the person exceeds the threshold amount” were substituted for “rent paid, or payable, by the person exceeds \$15” in paragraph 120(5)(a);
- (x) “rent, other than Government rent, paid or payable by a person exceeds the threshold amount” were substituted

for “rent paid or payable by the person exceeds \$15” in paragraph 120(7)(a); and

- (c) any increases in the amounts being paid by the person from time to time for board and lodging above the level being paid immediately before 12 June 1989 were disregarded.
- (5) Subclause (1) or (3) ceases to apply to a person’s pension, benefit or allowance rate when the amount of rent assistance that the person would be entitled to because of that subclause is less than, or equal to, the amount of rent assistance that the person is entitled to under this Act apart from this clause.
- (6) Subclause (1) or (3) will not apply to a person again once it has ceased to apply to the person.
- (7) References in this clause to *payments for board and lodging* include references to payments for accommodation and other services that are provided to a person who is residing in a nursing home.
- (8) In this clause:  
  
*boarder* means a person who ordinarily lives on premises where the person is provided with board and lodging.

**28 Rent assistance—retirement village residents (changes introduced on 13 June 1989)**

- (1) If:
  - (a) immediately before 3 November 1988:
    - (i) a person was receiving a social security pension, social security benefit or family allowance supplement; and
    - (ii) the person’s pension, benefit or allowance rate included an amount by way of rent assistance under the 1947 Act; and
  - (b) at all times since 3 November 1988:
    - (i) the person has been entitled to a social security pension, social security benefit or family allowance supplement; and

**Schedule 1A** Savings and transitional provisions

**Part 2** Savings and Transitional Provisions Applicable on the Transition from the 1947 Act to this Act

**Division 4** Continuation of earlier savings provisions

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- (ii) the person's principal home has been in a retirement village;

the person is to be taken not to be an ineligible homeowner or excluded homeowner for the purposes of this Act.

(2) If:

- (a) immediately after 13 June 1989:

- (i) a person was receiving a service pension; and

- (ii) the person's pension rate included an amount by way of rent assistance because of the operation of subsection 31(1) of the *Social Security and Veterans' Affairs Legislation Amendment Act 1988*; and

- (b) after 13 June 1989, the person began to receive a social security pension, social security benefit or family allowance supplement under the 1947 Act or this Act; and

- (c) subsection 31(1) of the *Social Security and Veterans' Affairs Legislation Amendment Act 1988* applied to the person at all times between 13 June 1989 and the person's commencing to receive the social security pension, social security benefit or family allowance supplement or would have applied to the person at all those times if the subsection had not been repealed; and

- (d) at all times since the person commenced to receive the social security pension, social security benefit or family allowance supplement:

- (i) the person has continued to receive a social security pension, social security benefit or family allowance supplement; and

- (ii) the person's principal home has continued to be in the retirement village;

the person is to be taken not to be an ineligible homeowner or excluded homeowner for the purposes of this Act.

- (3) If subclause (1) or (2) ceases to apply to the person, that subclause does not apply to the person again.

- (4) If a person is entitled to rent assistance because of subclause (1) or (2), any amount that would (apart from this subclause) be payable to the person by way of rent assistance is to be reduced by the sum of the increases in the amount of the maximum fortnightly rate of

any of the following payments to the person after 19 March 1996 (whether or not the type or amount of payment payable to the person varies after that day because the person's circumstances change):

- (a) a social security benefit;
  - (b) a social security pension;
  - (c) family payment under this Act as previously in force;
  - (ca) family allowance;
  - (d) non-benefit parenting allowance;
  - (e) child disability allowance;
  - (ea) carer allowance;
  - (f) double orphan pension;
  - (g) mobility allowance;
  - (h) youth training allowance.
- (5) Subclause (4) does not apply if:
- (a) the person is entitled to rent assistance because of subclause (1) or (2); and
  - (b) the amount of rent assistance payable is worked out under clause 63.
- (6) This clause ceases to apply (and cannot re-apply later) to a person if, as a result of the reduction required by subclause (4), no amount would be payable to the person by way of rent assistance.

### **Part 3—Saving and Transitional Provisions Applicable after the Commencement of this Act**

#### **36 Incentive allowance (changes introduced on 12 November 1991)**

(1) If:

- (a) a person is qualified for incentive allowance immediately before 12 November 1991; and
- (b) the person is receiving disability support pension on 12 November 1991 because of a determination referred to in clause 33;

the following provisions as in force immediately before 12 November 1991 continue to apply to the person:

- (c) points 1064-J1 to 1064-J3 (Pension Rate Calculator A); and
- (d) points 1065-F1 to 1065-F3 (Pension Rate Calculator B).

(2) If:

- (a) a person was receiving incentive allowance immediately before 12 November 1991; and
- (b) on or after 12 November 1991 the person ceases to be qualified for incentive allowance because the person undertakes vocational training or a rehabilitation program or obtains work; and
- (c) within 2 years after so ceasing to be qualified, the person undertakes an activity that would have qualified him or her for incentive allowance had it been undertaken immediately before 12 November 1991;

the following provisions as in force immediately before 12 November 1991 apply to the person:

- (d) points 1064-J1 to 1064-J3 (Pension Rate Calculator A); and
- (e) points 1065-F1 to 1065-F3 (Pension Rate Calculator B).

- (3) If a person's rate of disability support pension includes an amount for incentive allowance because of subclause (1) or (2) the

Clause 41

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person's rate of disability support pension cannot include an amount for rent assistance.

- (4) A person whose rate of disability support pension includes an amount for incentive allowance because of subclause (1) or (2) may elect, by written notice to the Secretary, to have the amount for incentive allowance excluded from the person's rate.

(4A) If:

- (a) a person is a member of a couple; and
- (b) the person's partner is living with the person in their home; and
- (c) the person's partner's rate of disability support pension includes an amount for incentive allowance because of subclause (1) or (2);

the person's rate of disability support pension cannot include an amount for rent assistance.

- (5) If a person referred to in subclause (1) ceases to be qualified for incentive allowance on or after 12 November 1991, subclause (1) ceases to apply to the person and cannot apply to the person again.

**41 Members of couples (changes made on 12 March 1992)**

(1) This clause applies to a person if:

(a) immediately before 12 March 1992:

- (i) the person was receiving a social security pension or a social security benefit; and
- (ii) the person was a member of a couple; and
- (iii) the person's partner:
  - (A) was not receiving a social security pension; and
  - (B) was not receiving a social security benefit; and
  - (C) was not receiving a service pension; and

(b) the clause has not ceased to apply to the person.

(2) This clause ceases to apply to a person if:

(a) the person ceases to receive that pension or benefit; or

Clause 42

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- (b) the rate of pension or benefit that would be payable to the person if this clause applied is less than the rate that would otherwise be payable; or
  - (c) the person ceases to be a member of that couple; or
  - (d) the person's partner receives:
    - (i) a social security pension; or
    - (ii) a social security benefit; or
    - (iii) a service pension.
- (3) If this clause applies to a person, the rate of the person's pension or benefit is to be calculated by using the appropriate Pension or Benefit Rate Calculator as if:
- (a) Pension Rate Calculator A were modified as specified in clause 42; and
  - (b) Pension Rate Calculator B were modified as specified in clause 43; and
  - (c) Pension Rate Calculator C were modified as specified in clause 44; and
  - (d) Pension Rate Calculator D were modified as specified in clause 45; and
  - (e) Pension Rate Calculator E were modified as specified in clause 46; and
  - (g) Benefit Rate Calculator B were modified as specified in clause 48.

**42 Modifications of Pension Rate Calculator A (changes made on 12 March 1992)**

- (1) If clause 41 and Pension Rate Calculator A in section 1064 apply to a person, the rate of the person's pension is to be calculated as if:
- (a) point 1064-B1 were omitted and the following point were substituted:

*Maximum basic rate*

“1064-B1 A person's maximum basic rate is \$7,841.60 per year (\$301.60 per fortnight).”;



- (b) point 1064-H2 were omitted and the following point were substituted:

*Rate of remote area allowance*

“1064-H2 The rate of remote area allowance payable to a person is worked out using Table H. The rate is the amount in column 1 plus an additional amount in column 3 for each pension or benefit increase child of the person.

<b>Table H—Remote area allowance</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Basic allowance per year</b>	<b>Basic allowance per fortnight</b>	<b>Additional allowance per year</b>	<b>Additional allowance per fortnight</b>
\$364.00	\$14.00	\$182.00	\$7.00

- (2) If this clause applies to a person, the person’s rate of pension is not to exceed twice the rate at which the pension would be payable to the person if the person’s partner were receiving a social security pension, a social security benefit or a service pension at a rate not more than \$6,539.00 per year.

**43 Modifications of Pension Rate Calculator B (changes made on 12 March 1992)**

- (1) If clause 41 and Pension Rate Calculator B in section 1065 apply to a person, the rate of the person’s pension is to be calculated as if:
- (a) point 1065-B1 were omitted and the following point were substituted:

*Maximum basic rate*

“1065-B1 A person’s maximum basic rate is \$7,841.60 per year (\$301.60 per fortnight).”;

- (b) point 1065-E2 were omitted and the following point were substituted:

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*Rate of remote area allowance*

“1065-E2 The rate of remote area allowance payable to a person is worked out using Table E. The rate is the amount in column 1 plus an additional amount in column 3 for each pension or benefit increase child of the person.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Basic allowance per year</b>	<b>Basic allowance per fortnight</b>	<b>Additional allowance per year</b>	<b>Additional allowance per fortnight</b>
\$364.00	\$14.00	\$182.00	\$7.00

- (2) If this clause applies to a person, the person’s rate of pension is not to exceed twice the rate at which the pension would be payable to the person if the person’s partner were receiving a social security pension, a social security benefit or a service pension at a rate not more than \$6,539.00 per year.

**44 Modifications of Pension Rate Calculator C (changes made on 12 March 1992)**

If clause 41 and Pension Rate Calculator C in section 1066 apply to a person, the rate of the person’s pension is to be calculated as if point 1066-H2 were omitted and the following point were substituted:

*Rate of remote area allowance*

“1066-H2 The rate of remote area allowance payable to a person is worked out using Table H. The rate is the amount in column 1 plus an additional amount in column 3 for each pension or benefit increase child of the person.

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<b>Table H—Remote area allowance</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Basic allowance per year</b>	<b>Basic allowance per fortnight</b>	<b>Additional allowance per year</b>	<b>Additional allowance per fortnight</b>
\$364.00	\$14.00	\$182.00	\$7.00

**45 Modifications of Pension Rate Calculator D (changes made on 12 March 1992)**

- (1) If clause 41 and Pension Rate Calculator D in section 1066A apply to a person, the rate of the person’s pension is to be calculated as if point 1066A-I2 were omitted and the following point were substituted:

*Rate of remote area allowance*

“1066A-I2 The rate of remote area allowance payable to a person is worked out using Table I. The rate is the amount in column 1 plus an additional amount in column 3 for each pension or benefit increase child of the person.

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<b>Table I—Remote area allowance</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Basic allowance per year</b>	<b>Basic allowance per fortnight</b>	<b>Additional allowance per year</b>	<b>Additional allowance per fortnight</b>
\$364.00	\$14.00	\$182.00	\$7.00

- (2) If this clause applies to a person, the person’s rate of pension is not to exceed twice the rate at which the pension would be payable to the person if the person’s partner were receiving a social security pension, a social security benefit or a service pension at a rate not more than \$6,539.00 per year.

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**46 Modifications of Pension Rate Calculator E (changes made on 12 March 1992)**

- (1) If clause 41 and Pension Rate Calculator E in section 1066B apply to a person, the rate of the person's pension is to be calculated as if point 1066B-F2 were omitted and the following point were substituted:

Rate of remote area allowance

"1066B-F2. The rate of remote area allowance payable to a person is worked out using Table F. The rate is the amount in column 1 plus an additional amount in column 3 for each pension or benefit increase child of the person.

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**Table F—Remote area allowance**

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<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Basic allowance per year</b>	<b>Basic allowance per fortnight</b>	<b>Additional allowance per year</b>	<b>Additional allowance per fortnight</b>
\$364.00	\$14.00	\$182.00	\$7.00

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- (2) If this clause applies to a person, the person's rate of pension is not to exceed twice the rate at which the pension would be payable to the person if the person's partner were receiving a social security pension, a social security benefit or a service pension at a rate not more than \$6,539.00 per year.

**48 Modifications of Benefit Rate Calculator B (changes made on 12 March 1992)**

If clause 41 and Benefit Rate Calculator B in section 1068 apply to a person, the rate of the person's pension is to be calculated as if:

- (a) point 1068-A1 were omitted and the following point were substituted:

*Interim total*

"1068-A1. The rate of benefit is a fortnightly rate.

*Method statement*

- Step 1.* Work out the person's **maximum basic rate** using MODULE B below.
- Step 2.* Work out any additional payment for a partner using MODULE C below.
- Step 3.* Work out any supplementary amount in respect of the person using MODULE D below.
- Step 4.* Work out any applicable additional amount for children using MODULE E below.
- Step 5.* Work out any applicable additional amount for rent using MODULE F below.
- Step 6.* Add up the amounts obtained in Steps 1 to 5: the result is called the **maximum payment rate**.
- Step 7.* Apply the ordinary income test using MODULE G below to work out the reduction for ordinary income.
- Step 8.* Apply the maintenance income test using MODULE H below to work out the reduction for maintenance income.
- Step 9.* Add up the reductions for ordinary income and maintenance income: the result is called the **total income reduction**.
- Step 10.* The rate of benefit is the difference between:
- (a) the maximum payment rate; and
  - (b) the total income reduction;
- plus any amount payable by way of remote area allowance (see MODULE J below).

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Note: if a person's rate is reduced under Step 10, the order in which the reduction is to be made against the components of the maximum payment rate is laid down by section 1207 (maximum basic rate and additional amount for partner first, then rent assistance and finally child amounts)."

(b) after Module C the following Module were inserted:

**Module D—Supplementary Amount for Member of Couple in Some Circumstances**

*Interim total of members of couples in which partner receives neither pension nor benefit not to fall below comparable 'single' MBR*

"1068-D1. A supplementary amount is to be added to a person's maximum basic rate if:

- (a) the person is a member of a couple; and
- (b) the person's partner:
  - (i) is not receiving a social security pension; and
  - (ii) is not receiving a service pension; and
  - (iii) is not receiving a social security benefit; and
  - (iv) is not receiving an AUSTUDY allowance; and
  - (v) is not receiving an ABSTUDY allowance; and
- (c) either:
  - (i) no amount is to be added to the person's maximum basic rate under point 1068-C1; or
  - (ii) the amount to be added to the person's maximum basic rate under point 1068-C1 is reduced under point 1068-C5; and
- (d) the person's interim total is less than the comparable 'single' MBR for the person.

Note 1: for *interim total* see point 1068-D2 below.

Note 2: for *comparable 'single' MBR* see point 1068-D3 below.

*Interim total*

"1068-D2. A person's *interim total* is the sum of the person's maximum basic rate and the amount (if any) to be added under Module C.

*Comparable ‘single’ MBR*

“1068-D3. The *comparable ‘single’ MBR* for a person is:

- (a) if the person has a dependent child—the rate specified under column 3A against item 1 in Table B in point 1067-B1 of Benefit Rate Calculator A; or
- (b) if the person does not have a dependent child—the rate specified under column 3B against:
  - (i) in the case of a person who has turned 18 but not 21—item 1; or
  - (ii) in the case of a person who has turned 21—item 3; in Table B of point 1068-B1 of this Benefit Rate Calculator.

*Rate of supplementary amount*

“1068-D4. The supplementary amount is the difference between the person’s interim total and the comparable ‘single’ MBR for the person.”.

- (c) point 1068-J3 were omitted and the following point substituted:

*Rate of remote area allowance*

“1068-J3. The rate of remote area allowance payable to a person is worked out using Table J. The rate is the amount in column 1 plus an additional amount in column 2 for each pension or benefit increase child of the person.

<b>Table J—Remote area allowance</b>	
<b>Column 1</b>	<b>Column 2</b>
<b>Basic allowance</b>	<b>Additional allowance for each pension or benefit increase child</b>
\$14.00	\$7.00

**49 Modifications of pharmaceutical allowance rates (changes made on 12 March 1992)**

- (1) This clause applies to a person if:
  - (a) immediately before 12 March 1992:

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- (i) the person was receiving pharmaceutical allowance; and
  - (ii) the person was a member of a couple; and
  - (iii) the person's partner:
    - (A) was not receiving a social security pension; and
    - (B) was not receiving a social security benefit; and
    - (C) was not receiving a service pension; and
  - (b) this clause has not ceased to apply to the person.
- (2) This clause ceases to apply to a person if:
- (a) the person ceases to be qualified for pharmaceutical allowance; or
  - (aa) neither a social security pension nor a social security benefit nor a service pension is payable to the person; or
  - (b) the rate of pharmaceutical allowance that would be payable to the person if this clause applied is less than the rate that would otherwise be payable; or
  - (c) the person ceases to be a member of that couple; or
  - (d) the person's partner receives:
    - (i) a social security pension; or
    - (ii) a social security benefit; or
    - (iii) a service pension.
- (3) If this clause applies to a person, the rate of the person's pharmaceutical allowance is to be calculated until 31 December 1992 as if the Pharmaceutical Allowance Rate Table in section 1061C were omitted and the following Table substituted:

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<b>Pharmaceutical allowance rate table</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Person's family situation</b>	<b>Rate per fortnight</b>
1.	Not member of a couple	\$5.20
2.	Partnered (partner getting neither social security pension nor benefit)	\$5.20
3.	Partnered (partner getting social security pension or benefit)	\$2.60

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<b>Pharmaceutical allowance rate table</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Person's family situation</b>	<b>Rate per fortnight</b>
4.	Member of an illness separated or respite care couple	\$5.20
5.	Partnered (partner getting service pension)	\$2.60

(4) If item 5 in the Table applies to a person, item 2 does not apply to the person.

(5) If:

- (a) this clause applies to a person; and
- (b) the person is receiving a social security pension;

the person's pension rate is to be calculated as from 1 January 1993 using the following Table to work out the amount of pharmaceutical allowance to be added to the person's maximum basic rate:

<b>Pharmaceutical allowance amount table</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Item</b>	<b>Person's family situation</b>	<b>Amount per year</b>	<b>Amount per fortnight</b>
1.	Not member of a couple	\$135.20	\$5.20
2.	Partnered (partner getting neither social security pension nor benefit)	\$135.20	\$5.20
3.	Partnered (partner getting social security pension or benefit)	\$67.60	\$2.60
4.	Member of an illness separated or respite care couple	\$135.20	\$5.20
5.	Partnered (partner getting service pension)	\$67.60	\$2.60

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- (6) If:
- (a) this clause applies to a person; and
  - (b) the person is receiving a social security benefit;
- the person's benefit rate is to be calculated as from 1 January 1993 using the following Table to work out the amount of pharmaceutical allowance to be added to the person's maximum basic rate:

<b>Pharmaceutical allowance amount table</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Person's family situation</b>	<b>Amount per fortnight</b>
1.	Not member of a couple	\$5.20
2.	Partnered (partner getting neither social security pension nor benefit)	\$5.20
3.	Partnered (partner getting social security pension or benefit)	\$2.60
4.	Member of an illness separated or respite care couple	\$5.20
5.	Partnered (partner getting service pension)	\$2.60

**63 Rent assistance (changes introduced on 20 March 1993)**

- (1) This clause applies to a person if:
- (a) immediately before 20 March 1993:
    - (i) the person was receiving a social security pension, a social security benefit or additional family payment; and
    - (ii) the person's pension, benefit or payment rate included an amount by way of rent assistance; and
  - (b) this subclause has continued to apply to the person.
- (2) If:
- (a) a decision is made on or after 20 March 1993 that a person is entitled to rent assistance in respect of a period; and
  - (b) the period starts before 20 March 1993; and

(c) the period continued until at least 19 March 1993;  
the person is taken, for the purposes of this clause, to have been receiving rent assistance under this Act immediately before 20 March 1993.

- (3) This clause applies to a person if:
- (a) immediately before 20 March 1993, the person was receiving rent assistance under or because of the Veterans' Entitlement Act; and
  - (b) after that date, the person becomes entitled to be paid a social security pension, a social security benefit or additional family payment; and
  - (c) this subclause has continued to apply to the person.

- (3A) Subject to subclauses (7), (8) and (9), if this clause applies to a person, the amount by way of rent assistance to be used to calculate the person's pension, benefit or payment rate is the amount (the *floor amount*) worked out using the formula:

Preserved rent assistance – Post -1995 increase

where:

*preserved rent assistance* is the amount worked out under subclause (4).

*post-1995 increase* is the sum of the increases in the amount of the maximum fortnightly rate of any of the following payments to the person after 19 March 1996 or the later day (the *application day*) this clause first applied to the person (whether or not the type or amount of payment payable to the person varies after 19 March 1996 or the application day because the person's circumstances change):

- (a) a social security benefit;
- (b) a social security pension;
- (c) family payment under this Act as previously in force;
- (ca) family allowance;
- (d) non-benefit parenting allowance;
- (e) child disability allowance;
- (ea) carer allowance;
- (f) double orphan pension;

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- (g) mobility allowance;
  - (h) youth training allowance.
- (4) For the purposes of subclause (3A), the *preserved rent assistance* is the amount by way of rent assistance that would be included in the person's pension, benefit or payment rate if:
- (a) the person's pension, benefit or payment rate were neither income reduced nor assets reduced; and
  - (b) the amount by way of rent assistance were calculated under this Act as in force immediately before 20 March 1993.
- (5) Subject to subclause (6), subclause (1) or (3) ceases to apply to a person if:
- (a) the person ceases to receive a social security pension, social security benefit or additional family payment; or
  - (b) the person ceases to be qualified for rent assistance; or
  - (c) the Secretary considers that there is a significant change in the person's circumstances that would affect the amount of rent assistance that is payable to the person apart from this clause; or
  - (d) the amount of rent assistance that would be payable to the person if this clause applied is less than (or equal to) the amount of rent assistance that would otherwise be payable.
- (6) If:
- (a) subclause (1) or (3) ceases to apply to a person; and
  - (b) within 42 days, or such longer period as the Secretary determines, of that subclause ceasing to apply to the person, there is a change in the person's circumstances; and
  - (c) the Secretary considers that the change in the person's circumstances is so significant that subclause (1) or (3) should apply to the person;
- the Secretary may determine that subclause (1) or (3) is to apply to the person from a specified date.
- (7) If:
- (a) subclause (1) or (3) applies to a person; and
  - (b) the person becomes a member of a couple; and

(c) the person's partner is a person to whom subclause (1) or (3) applies;

the amount by way of rent assistance to be used to calculate the person's pension, benefit or payment rate and the amount by way of rent assistance to be used to calculate the person's partner's pension, benefit or payment rate is not to fall below one-half of the person's floor amount or one-half of the person's partner's floor amount, whichever is the greater.

(8) If:

- (a) subclause (1) or (3) applies to a person; and
- (b) the person becomes a member of a couple; and
- (c) the person's partner is a person to whom section 111 of the *Veterans' Affairs Legislation Amendment Act (No. 2) 1992* applies or would apply if it had not been repealed;

the amount by way of rent assistance to be used to calculate the person's pension, benefit or payment rate is not to fall below one-half of the person's floor amount or one-half of the person's partner's floor amount, whichever is the greater.

(9) If:

- (a) subclause (1) or (3) applies to a person; and
- (b) the person becomes a member of a couple; and
- (c) the person's partner is not a person to whom subclause (1) or (3) applies; and
- (d) the person's partner is not a person to whom section 111 of the *Veterans' Affairs Legislation Amendment Act (No. 2) 1992* applies or would apply if it had not been repealed; and
- (e) the person's partner is a person who is receiving a pension, benefit or additional family payment or a pension under Part III of the *Veterans' Entitlements Act 1986*;

the amount by way of rent assistance to be used to calculate the person's pension, benefit or additional family payment rate and the amount by way of rent assistance to be used to calculate the rate of the person's partner's pension, benefit or additional family payment is not to fall below the person's floor amount.

(10) If:

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- (a) a person is receiving a social security pension or a social security benefit; and
- (b) neither subclause (1) nor (3) applies to the person; and
- (c) the person has become or becomes a member of a couple; and
- (d) the person's partner is receiving a pension under the *Veterans' Entitlements Act 1986* and is a person to whom clause 5 of Schedule 5 to that Act applies;

the amount by way of rent assistance to be used to calculate the rate of the person's social security pension or social security benefit is not to fall below one-half of the amount that would be the person's partner's floor amount if subclause (1) or (3) applied to the partner.

**67** **Sickness allowance for people on rehabilitation programs**  
**(changes introduced on 20 March 1994)**

- (1) Subsections 667(1) and (2), as in force immediately before 20 March 1994, continue to apply to a person who started a rehabilitation program before 20 March 1994.
- (2) Subclause (1) ceases to apply to the person when the person finishes the rehabilitation program.

**69B** **Saving of job search allowance and newstart allowance**  
**deferment determinations**

- (1) If:
  - (a) before 4 July 1994, the Secretary determined under an automatic deferment provision a day on which a deferment period was to commence under that provision; and
  - (b) that day did not occur before 4 July 1994;the Secretary's determination has effect after 4 July 1994 as if it had been made under section 546B, 547B, 630B or 631B, whichever is applicable.
- (2) For the purposes of the operation of subclause (1), subsection 546B(4), 547B(4), 630B(4) or 631B(4), as the case requires, is taken not to apply.

**74 Partner allowance for persons born on or before 1 July 1955  
(changes made on 1 July 1995)**

- (1) If:
  - (a) a person was receiving partner allowance immediately before 1 July 1995; and
  - (b) the person was born on or before 1 July 1955;the person need not satisfy paragraph 771HA(1)(h) in order to be qualified for partner allowance.
- (2) If partner allowance ceases to be payable to a person referred to in subclause (1):
  - (a) that subclause ceases to apply to the person; and
  - (b) cannot apply to the person again.

**80 Income determinations (changes made on 1 January 1996)**

- (1) Sections 884, 885 and 886 as in force immediately before 1 January 1996 continue to apply in relation to payments made in respect of family payment paydays that occurred before that date.
- (2) Sections 884, 885 and 886 as in force on 1 January 1996 apply in relation to:
  - (a) all payments of family payment made on or after that date; and
  - (b) all payments of family allowance made on or after 1 April 1998.

**86 Transitional and saving provisions applicable to the amendments relating to the pension loans scheme**

- (1) If:
  - (a) a person has made a request to participate in the previous pension loans scheme; and
  - (b) Schedule 7 to the Amending Act commences before the first pension payday after the lodging of the request;for the purposes of this clause, the person is to be treated as a person who is participating in the previous pension loans scheme.

Clause 86

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- (2) Subject to subclause (3), in relation to a person who is participating in the previous pension loans scheme, subsection 11(1), paragraph 23(1)(b), subsection 1118(1) and Division 4 of Part 3.12 of this Act, as in force immediately before the commencement of Schedule 7 to the Amending Act, continue to have effect as if the Amending Act had not been enacted.
- (3) If a person who is participating in the previous pension loans scheme:
  - (a) is qualified to participate in the current pension loans scheme; and
  - (b) makes a request to participate in the current scheme;and the Secretary is satisfied that the amount of any debt that would become payable by the person to the Commonwealth under the current scheme would be readily recoverable, the current scheme applies to the person on and after the first pension payday after the request is lodged.
- (4) The debt owed by a person who was participating in the previous pension loans scheme and who is participating in the current pension loans scheme by operation of subclause (3) is, for the purposes of working out the debt owed by the person under the current scheme, to be added to the basic amount of debt accrued under the current scheme.
- (5) In this clause:

*Amending Act* means the *Social Security and Veterans' Affairs Legislation Amendment Act 1995*.

*current pension loans scheme* means the pension loans scheme in operation under the provisions of this Act, as amended by the Amending Act.

*previous pension loans scheme* means the pension loans scheme in operation under the provisions of this Act, as in force immediately before the commencement of Schedule 7 to the Amending Act.



**88 Saving: Determinations under repealed sections 1099E and 1099L**

A determination in force under section 1099E or 1099L immediately before the commencement of this clause continues to have effect after that commencement as if:

- (a) section 1084 of this Act, as in force immediately after the commencement of this clause, had been in force when the determination was made; and
- (b) the determination had been made under that section as so in force; and
- (c) any reference in the determination to section 1099B, 1099J or 1099K were a reference to sections 1076 to 1078 of this Act.

**96 Application and saving provisions: advance payment provisions**

- (1) Subject to subclauses (2), (3) and (4), Parts 2.22 and 3.16A of this Act, as amended by the amending Act, apply in relation to:
  - (a) all applications for an advance payment of a social security entitlement made on or after 1 January 1997; and
  - (b) all advance payments of social security entitlements made on or after that day.
- (2) If:
  - (a) a person made an application for an advance payment of a social security entitlement under Part 2.22 of this Act before 1 January 1997; and
  - (b) the application was not determined before that day; and
  - (c) the person was not qualified for the advance payment under this Act, as in force immediately before that day;

Parts 2.22 and 3.16A of this Act, as amended by the amending Act, apply in relation to the application, and to any advance payment of a social security entitlement made pursuant to the application.

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Clause 96A

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(3) If:

- (a) a person made an application for an advance payment of a social security entitlement under Part 2.22 of this Act before 1 January 1997; and
- (b) the application was not determined before that day; and
- (c) the person was qualified for the advance payment under this Act, as in force immediately before that day;

Parts 2.22 and 3.16A of this Act, as so in force, continue to apply in relation to the application, and to any advance payment of a social security entitlement made pursuant to the application.

(4) If:

- (a) a person receives the amount of an advance payment of a social security entitlement in a single lump sum, or the first instalment of such an amount, on or after 1 January 1997; and
- (b) the relevant application for the advance payment was made before 1 January 1997; and
- (c) subclause (3) applies in relation to the application;

paragraph 1061A(4)(c) of this Act, as amended by the amending Act, does not apply in relation to any application made by the person for another advance within 12 months from the day the lump sum or instalment was paid.

(5) In this clause:

**amending Act** means the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*.

**96A Application of revised Schedule 1B**

- (1) Subject to subclause (2), this Act, as amended by items 1, 2 and 4 of Schedule 16 of the amending Act, applies to claims lodged on or after the date of commencement of those items.
- (2) Despite section 8 of the *Acts Interpretation Act 1901*, the amendments made by items 1, 2 and 4 of Schedule 16 to the amending Act, apply in relation to:

- (a) all medical, psychiatric or psychological examinations attended, or reports required, under subsection 105(1) on or after the date of commencement of those items; and
  - (b) all legal proceedings, applications for review of decisions, or determinations, to the extent that the proceedings, applications or determinations relate to, or involve, a medical, psychiatric or psychological examination referred to in paragraph (a).
- (3) In this clause:

*amending Act* means the *Social Security and Veterans' Affairs Legislation Amendment (Family and Other Measures) Act 1997*.

**98 Application and transitional provisions: amendments relating to tightening the activity test administration and simplifying the penalty periods that apply to youth training allowance**

- (1) Subject to subclauses (2), (3) and (4), this Act, as amended by Parts 3 and 4 of Schedule 5 to the amending Act, applies to events occurring on or after 20 March 1997.
- (2) Subject to subclause (4), if, immediately before 20 March 1997, a person was subject to an activity test deferment period or an administrative breach deferment period that would end on or after 20 March 1997, then, despite the amendments made by Parts 3 and 4 of Schedule 5 to the amending Act, this Act, as in force immediately before 20 March 1997 continues to apply to the person in relation to that period.
- (3) If:
  - (a) immediately before 20 March 1997, a person was subject to an administrative breach deferment period that would end on or after 20 March 1997; and
  - (b) an activity test deferment period or an administrative breach rate reduction period applies to the person on or after 20 March 1997;

then, despite the amendments made by Part 3 of Schedule 5 to the amending Act, the activity test deferment period or administrative breach rate reduction period commences the day after the end of the administrative breach deferment period.

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(4) If:

- (a) an event occurs before 20 March 1997 that results in a person being subject to an activity test deferment period or an administrative breach deferment period; and
- (b) the period referred to in paragraph (a) has not commenced before 20 March 1997;

this Act applies as if the amendments made by Parts 3 and 4 of Schedule 5 had commenced the day before the event referred to in paragraph (a) occurred.

(5) In this clause:

*amending Act* means the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*.

**99 Application provision: amendments relating to unemployment due to industrial action**

This Act, as amended by Schedule 6 to the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*, applies to all persons who cease industrial action on or after 1 January 1997.

**100 Application provision: amendments relating to the abolition of the minimum rate of payment to under 18 year old sickness allowance and newstart allowance recipients**

This Act, as amended by Parts 1 and 2 of Schedule 3 to the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*, applies in respect of sickness allowance and newstart allowance for any payment fortnight starting on or after 1 January 1997.

**101 Application provision: abolition of the earnings credit scheme**

This Act, as amended by Schedule 10 to the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*, applies:

- (a) in respect of social security benefits (other than parenting allowance)—for any payment period (within the meaning of

that term in section 42 as in force immediately before the commencement of Schedule 1 to the *Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999*, as in force immediately before the commencement of Schedule 1 to the *Social Security and Veterans' Affairs Legislation Amendment (Payment Processing) Act 1998* starting on or after 20 March 1997; or

- (b) in respect of a payday-based payment (within the meaning of that term in section 42 as in force immediately before the commencement of Schedule 1 to the *Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999*, as in force immediately before the commencement of Schedule 1 to the *Social Security and Veterans' Affairs Legislation Amendment (Payment Processing) Act 1998*)—the first payday that occurs on or after 20 March 1997 and subsequent paydays; or
- (c) in respect of any social security payment, on the first day after the commencement of Schedule 1 to the *Social Security and Veterans' Affairs Legislation Amendment (Payment Processing) Act 1998* on which instalments of a social security payment are paid and every day thereafter on which such instalments are paid; or
- (c) in respect of any social security payment, on the first day after the commencement of Schedule 1 to the *Social Security (Administration and International Agreements) (Consequential Amendments) Act 1999* on which instalments of a social security payment are paid and every day thereafter on which such instalments are paid.

**102 Application provision: amendments relating to the application of the below threshold deeming rate**

This Act, as amended by Schedule 17 to the Social Security Legislation Amendment (Budget and Other Measures) Act 1996, applies:

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- (a) in respect of social security benefits (other than parenting allowance)—for any fortnight starting on or after 20 March 1997; or
- (b) in respect of a payday-based payment (within the meaning of that term in section 42, as in force immediately before the commencement of Schedule 1 to the *Social Security and Veterans' Affairs Legislation Amendment (Payment Processing) Act 1998*)—the first payday that occurs on or after 20 March 1997 and subsequent paydays; or
- (c) in respect of any social security payment, the first day after the commencement of Schedule 1 to the *Social Security and Veterans' Affairs Legislation Amendment (Payment Processing) Act 1998* on which instalments of a social security payment are paid and every day thereafter on which such instalments are paid.

**102A Application and transitional provisions: amendments relating to simplifying the penalty periods that apply to newstart allowance**

- (1) Subject to subclauses (2), (3), (4) and (5), this Act, as amended by Schedule 1 to the amending Act, applies to events occurring on or after the commencement.
- (2) If, immediately before the commencement, a person was subject to an activity test deferment period that would end on or after the commencement, then, despite the amendments made by Schedule 1 to the amending Act, this Act, as in force immediately before the commencement, continues to apply to the person in relation to that period.
- (3) If:
  - (a) an event occurs before the commencement that would, apart from this subclause, result in a person being subject to an activity test deferment period or an administrative breach rate reduction period; and
  - (b) the period referred to in paragraph (a) has not commenced before the commencement; and
  - (c) an action has occurred or a decision has been taken under this Act in relation to the application of the activity test

deferment period or the administrative breach rate reduction period to the person;

then:

- (d) this Act, as amended by Schedule 1 to the amending Act, applies to the event referred to in paragraph (a) from the commencement; and
  - (e) despite the fact that the event occurred before the commencement, the period or periods are to begin on the commencement.
- (4) If subclauses (2) and (3) both apply, then, despite any other provision of this Act, only the restrictions on payments relating to the activity test deferment period are to apply to the person during the period of overlap.
- (5) If:
- (a) an event occurs before the commencement that would, apart from this subclause, result in a person being subject to an activity test deferment period or an administrative breach rate reduction period; and
  - (b) the period referred to in paragraph (a) has not commenced before the commencement; and
  - (c) before the commencement, neither an action has occurred, nor a decision been taken, under this Act relating to the application of the activity test deferment period to the person;
- this Act, as amended by Schedule 1 to the amending Act, applies to the event referred to in paragraph (a) as if the event occurred on the commencement.

- (6) In this clause:

***amending Act*** means the *Social Security Legislation Amendment (Activity Test Penalty Periods) Act 1997*.

***commencement*** means the commencement of this clause.

Clause 102AA

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**102AA Review of decisions under section 5 of the *Aged Care Income Testing Act 1997***

- (1) If:
- (a) before the commencement day, the Secretary was, under section 1239 of this Act, reviewing a decision made under section 5 of the *Aged Care Income Testing Act 1997*; and
  - (b) as at the commencement day, the Secretary had not yet:
    - (i) affirmed the decision; or
    - (ii) varied the decision; or
    - (iii) set the decision aside and substituted a new decision;
- the review of the decision has effect, on and after the commencement day, as if it were a review by the Secretary of a decision made under section 44-24 of the *Aged Care Act 1997*.

- (2) In this clause:

*commencement day* means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

**102B Applications for review of decisions made under section 5 of the *Aged Care Income Testing Act 1997***

- (1) If:
- (a) before the commencement day, a person had, under section 1240 of this Act, applied to the Secretary for review of a decision made under section 5 of the *Aged Care Income Testing Act 1997*; and
  - (b) as at the commencement day, the Secretary had not yet:
    - (i) affirmed the decision; or
    - (ii) varied the decision; or
    - (iii) set the decision aside and substituted a new decision;
- the application for review of the decision has effect, on and after the commencement day, as if it were an application made on that day for review of a decision made under section 44-24 of the *Aged Care Act 1997*.



(2) In this clause:

*commencement day* means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

**102C Review by SSAT of decisions relating to determinations under section 5 of the *Aged Care Income Testing Act 1997***

(1) If:

- (a) before the commencement day, a person had, under section 1247 of this Act, applied to the SSAT for review of a decision; and
- (b) the decision related to a determination under section 5 of the *Aged Care Income Testing Act 1997*; and
- (c) as at the commencement day, the SSAT had not yet made a decision on the review;

the application for review has effect, on and after the commencement day, as if it were an application for review of a decision relating to a determination made under section 44-24 of the *Aged Care Act 1997*.

(2) In this clause:

*commencement day* means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

**102D Review by AAT of decisions relating to determinations under section 5 of the *Aged Care Income Testing Act 1997***

(1) If:

- (a) before the commencement day, a person had, under section 1282 of this Act, applied to the AAT for review of a decision; and
- (b) the decision related to a determination under section 5 of the *Aged Care Income Testing Act 1997*; and
- (c) as at the commencement day, the AAT had not yet made a decision on the review;

the application for review has effect, on and after the commencement day, as if it were an application for review of a

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decision relating to a determination made under section 44-24 of the *Aged Care Act 1997*.

(2) In this clause:

*commencement day* means the day on which the *Aged Care Act 1997* (other than Division 1 of that Act) commences.

**102E Application provision—abolition of residential care allowance and amendments relating to rent assistance**

- (1) The amendments to this Act made by Parts 1, 2 and 4 of Schedule 3 to the *Aged Care (Consequential Provisions) Act 1997* apply:
- (a) to an instalment of social security benefit payable in respect of a period starting on or after the day on which the *Aged Care Act 1997* commences; and
  - (b) to a payment of social security pension in respect of a pension period starting after that day.

**103 Application provision: income maintenance periods**

- (1) This Act, as amended by Part 1 of Schedule 7 to the amending Act, applies in relation to leave payments that are received on or after 20 September 1997.
- (2) For the purposes of this section, a person (the *first person*) is taken to receive a leave payment if the payment is made to another person:
- (a) at the direction of the first person or a court; or
  - (b) on behalf of the first person; or
  - (c) for the benefit of the first person; or
- the first person waives or assigns the first person's right to receive the payment.
- (3) In this section:
- amending Act* means the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*.

*leave payment* includes payments in respect of sick leave, annual leave, maternity leave, and long service leave.

**104 Application provision: amendments relating to the liquid assets test waiting period**

This Act, as amended by Part 2 of Schedule 7 to the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*, applies to all claims lodged on or after 20 September 1997.

**104A Application provision: amendments relating to means test exemption for superannuation assets**

If:

- (a) a person receives a period-based social security payment paid in arrears; and
- (b) the person's first payday after 20 September 1997 is within 2 weeks of that day; and
- (c) the person's rate of payment is affected by the amendments made by Schedule 1 to the *Social Security Legislation Amendment (Further Budget and Other Measures) Act 1996*; the person's rate of payment for that payday is to be calculated on a pro rata basis under this Act as in force both immediately before and immediately after the commencement of that Schedule.

**105 Application and saving provisions: debts due to the Commonwealth and their recovery**

- (1) For the avoidance of doubt, and without affecting the operation of section 8 of the *Acts Interpretation Act 1901*, Part 2 of Schedule 18 to the amending Act does not:
  - (a) affect the operation of Part 5.2 or 5.3 of this Act before 1 October 1997; or
  - (b) extinguish the amount of any debt due to the Commonwealth arising before 1 October 1997 that was outstanding at the start of that day; or
  - (c) prevent the recovery, on or after 1 October 1997, of any such outstanding amount.

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- (2) Sections 1230C and 1236 of this Act, as amended by the amending Act, apply in relation to:
  - (a) debts arising on or after 1 October 1997; and
  - (b) the amounts of debts arising before that day that were outstanding at the start of that day.
- (3) Section 1237A of this Act, as amended by the amending Act, applies in relation to debts arising before, on or after 1 October 1997.
- (4) Despite section 8 of the *Acts Interpretation Act 1901*, if a legal proceeding or an application for review of a decision:
  - (a) relates to, or otherwise involves, a provision of Part 5.2, 5.3 or 5.4 of this Act; and
  - (b) is not finally determined before 1 October 1997;the proceeding or application must, if continued, be determined as if it had been instituted on that day, and this Act, as amended by Schedule 18 to the amending Act, applies to the proceeding or application accordingly.
- (5) In this clause:

**amending Act** means the *Social Security Legislation Amendment (Budget and Other Measures) Act 1996*.

**105A Parenting payment (changes introduced 20 March 1998)**

*Continuing effect of determinations etc. in force or effective before 20 March 1998*

- (1) If a determination, notice, statement or other instrument relating to sole parent pension or to parenting allowance was in force or had effect immediately before 20 March 1998, it continues in force on and after that date as if it had been made or given under this Act in relation to parenting payment.

*Pending claims for sole parent pension or parenting allowance*

- (2) If:
  - (a) a person lodged a claim for sole parent pension or parenting allowance under this Act before 20 March 1998; and

(b) the claim was not determined before that date;  
the claim has effect on and after that date as if it were a claim for parenting payment.

*Claims made on or after 20 March 1998 in respect of periods before 20 March 1998—sole parent pension and parenting allowance*

(3) If:

- (a) a person lodges a claim for sole parent pension or parenting allowance on or after 20 March 1998; and
- (b) the claim is made in respect of a period commencing before 20 March 1998;

the claim has effect as if it had been made immediately before 20 March 1998.

*Claims made on or after 20 March 1998 in respect of periods before 20 March 1998—parenting payment*

(4) If:

- (a) a person lodges a claim for parenting payment on or after 20 March 1998; and
- (b) the claim is made in respect of a period commencing before 20 March 1998;

the claim has effect:

- (c) as if it had been made immediately before 20 March 1998; and
- (d) in the case of a person who was not a member of a couple at the beginning of the period in respect of which the claim is made—as if it were a claim for sole parent pension; and
- (e) in the case of a person who was a member of a couple at the beginning of the period in respect of which the claim is made—as if it were a claim for parenting allowance.

*Sole parent pension bereavement payment in respect of death of child*

(5) If, immediately before 20 March 1998:

- (a) a person was qualified for a payment under Subdivision A of Division 9 of Part 2.6; and

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(b) the period for which the person was qualified had not yet ended;

then:

(c) the person remains qualified for that payment on and after 20 March 1998 as if Parts 2.6 and 3.4 as in force immediately before that date were still in force; and

(d) subclause (1) (dealing with continuing effect of determinations) does not apply to the person.

*Sole parent pension bereavement payment in respect of death of pensioner partner*

(6) If, immediately before 20 March 1998:

(a) a person was qualified for a payment under Subdivision B of Division 9 of Part 2.6; and

(b) the period for which the person was qualified had not yet ended;

then:

(c) the person remains qualified for that payment on and after 20 March 1998 as if Parts 2.6 and 3.2 as in force immediately before that date were still in force; and

(d) subclause (1) (dealing with continuing effect of determinations) does not apply to the person; and

(e) on the day after the end of the period referred to in paragraph (b), the person is taken to have made a claim for parenting payment.

*Parenting allowance bereavement payment in respect of death of child*

(7) If, immediately before 20 March 1998:

(a) a person was qualified for a payment under Subdivision B of Division 10 of Part 2.18; and

(b) the period for which the person was qualified had not yet ended;

then:

(c) the person remains qualified for that payment on and after 20 March 1998 as if Parts 2.18 and 3.6A as in force immediately before that date were still in force; and

- (d) subclause (1) (dealing with continuing effect of determinations) does not apply to the person.

*Parenting allowance bereavement payment in respect of death of partner*

- (8) If, immediately before 20 March 1998:
- (a) a person was qualified for a payment under Subdivision D or E of Division 10 of Part 2.18; and
  - (b) the period for which the person was qualified had not yet ended;
- then:
- (c) the person remains qualified for that payment on and after 20 March 1998 as if Parts 2.18 and 3.6A as in force immediately before that date were still in force; and
  - (d) subclause (1) (dealing with the continuing effect of determinations) does not apply to the person; and
  - (e) on the day after the end of the period referred to in paragraph (b), the person is taken to have made a claim for parenting payment.

*Pending application for advance payment of sole parent pension*

- (9) If:
- (a) a person lodged an application for an advance payment of sole parent pension under Part 2.22 before 20 March 1998; and
  - (b) the application was not determined before that date;
- the application is taken, on and after that date, to be an application for an advance payment of pension PP (single).

*Saving of certain SPP children*

- (10) If:
- (a) sole parent pension was payable to a person who was not in Australia immediately before 20 March 1998 in relation to an SPP child; and
  - (b) parenting payment would, but for the operation of section 500F, 500G or 500H, be payable to the person on that date in relation to that child;

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those sections do not apply to the person in relation to that child until one of the following events occurs:

- (c) the child ceases to be a PP child of the person because of the operation of a provision other than section 500F, 500G or 500H;
- (d) parenting payment ceases to be payable to the person;
- (e) the person becomes a member of a couple;
- (f) if the person was not an Australian resident on 20 March 1998—the person becomes an Australian resident;
- (g) if the person was an Australian resident on 20 March 1998—the person returns to Australia.

*Application: income maintenance period rules*

- (11) The following provisions (dealing with income maintenance periods in relation to continuing employment) as in force on 20 March 1998 apply to a person in respect of a leave period commencing on or after 20 March 1998:
  - (a) point 1067-H5G;
  - (b) point 1067E-G6G;
  - (c) point 1068-G7AG.
- (12) Subject to subclause (13), point 1068A-E4 (dealing with income maintenance periods in relation to terminated employment) as in force on 20 March 1998 applies to a person in respect of any leave payment received by the person on or after 20 March 1998.
- (13) If:
  - (a) a determination applying an income maintenance period in relation to a person's claim for, or payment of, parenting allowance, a social security benefit or youth training allowance was in force on or after 20 September 1997; and
  - (b) pension PP (single) is payable to the person on or after 20 March 1998;point 1068A-E4 applies to the person in respect of any leave payment received by the person on or after 20 September 1997.



*Saving of certain recipients of sole parent pension and parenting allowance*

(14) If:

- (a) sole parent pension or parenting allowance was payable to a person immediately before 20 March 1998; and
- (b) on 20 March 1998 the person would not, apart from this subclause, qualify for parenting payment because the person does not satisfy the requirements of paragraph 500(1)(d);  
the person is taken, on and after 20 March 1998, to satisfy the requirements of paragraph 500(1)(d) until:
- (c) parenting payment ceases to be payable to the person; or
- (d) the person satisfies the requirements of paragraph 500(1)(d) otherwise than by reason of this subclause.

*Saving of certain other recipients of sole parent pension*

(15) If:

- (a) sole parent pension was payable to a person who was not in Australia immediately before 20 March 1998; and
- (b) on or after 20 March 1998, the person would not, apart from this subclause, qualify for parenting payment because the person does not satisfy the requirements of either or both of paragraphs 500(1)(b) and (c);  
the person is taken, on and after 20 March 1998, to satisfy the requirements of both those paragraphs until:
- (c) parenting payment ceases to be payable to the person; or
- (d) the person becomes a member of a couple; or
- (e) if the person was not an Australian resident on 20 March 1998—the person becomes an Australian resident; or
- (f) if the person was an Australian resident on 20 March 1998—the person returns to Australia.

(16) In relation to a person who is receiving parenting payment because of the application of subclause (15) and Part 4.2 of this Act, as in force immediately before 20 March 1998, apply to the person on and after 20 March 1998. These provisions apply to the person as if references to sole parent pension were references to pension PP (single).

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*Saving of persons receiving sole parent pension under scheduled international social security agreement*

(17) If:

- (a) a sole parent pension was payable to a person immediately before 20 March 1998 under a scheduled international social security agreement; and
- (b) the person is not a member of a couple; and
- (c) on 20 March 1998, the person would qualify for parenting payment but for the operation of any of the following:
  - (i) paragraph 500(1)(b) or (c);
  - (ii) subparagraph 500(1)(d)(ii) to the extent it requires a person to have been in Australia for the period specified in that subparagraph;
  - (iii) section 500F, 500G or 500H;

then, on and after 20 March 1998:

- (d) the provisions referred to in paragraph (c) do 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.

(18) Subclause (17) applies to a person until:

- (a) parenting payment ceases to be payable to the person; or
- (b) the person satisfies the provisions referred to in paragraph (17)(c).

**106 Determinations etc. relating to family payment continue in force as determinations etc. relating to family allowance**

If a determination or other instrument relating to family payment that was made or given under this Act as in force before 1 April 1998 was in force immediately before that date, the determination or other instrument continues in force, subject to this Act, on and after that date as if it were made or given under this Act in relation to family allowance.

**107 Pending claims for family payment**

- (1) If:
- (a) a person lodged a claim for family payment under this Act before 1 April 1998; and
  - (b) the claim was not determined before that date;
- the claim has effect on and after that date as if it were a claim for family allowance.
- (2) If:
- (a) subclause (1) applies to a claim; and
  - (b) the claim is granted under this Act;
- the determination granting the claim may have a date of effect before 1 April 1998.

**108 Savings—Disabled child (changes made on 1 July 1998)**

Despite the amendment made by item 7 of Schedule 2 to the *Social Security Legislation Amendment (Parenting Payment and Other Measures) Act 1997*, section 952 as in force immediately before the commencement of that item:

- (a) applies to a young person in respect of whom child disability allowance was payable to a person on 30 June 1998 as a result of a claim made before that date; and
- (b) continues so to apply until:
  - (i) the day on which the allowance ceases to be payable to the person; or
  - (ii) the end of 30 June 1999;whichever is the earlier.

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**108A Disabled child (changes made on 1 July 1999)**

- (1) If clause 108 applies to a young person immediately before the end of 30 June 1999, Part 2.19 of this Act applies on and after 1 July 1999 to the young person as if the changes set out in subclauses (2), (3), (4) and (5) were made, and that Part continues so to apply until:
- (a) the day on which carer allowance for the young person ceases to be payable; or
  - (b) 30 June 2003;
- whichever is the earlier.

*Disabled child changes*

- (2) The first change is that the definition of **disabled child** in section 952 is to be replaced by the following definition:

**disabled child** means a young person aged under 16 in respect of whom the following requirements are satisfied:

- (a) the young person has a physical, intellectual or psychiatric disability; and
  - (b) because of that disability:
    - (i) the young person needs care and attention from another person on a daily basis; and
    - (ii) the care and attention needed by the young person are substantially more than are needed by a young person of the same age who does not have a physical, intellectual or psychiatric disability; and
  - (c) the young person is likely to need that care and attention permanently or for an extended period.
- (3) The second change is that paragraph 953(1)(c) is to be omitted.

*Disabled adult changes*

- (4) The third change is that the definition of **disabled adult** in section 952 is to be replaced by the following definition:

**disabled adult** means a young person aged 16 or more in respect of whom the following requirements are satisfied:

- (a) the young person has a physical, intellectual or psychiatric disability; and
  - (b) because of that disability:
    - (i) the young person needs care and attention from another person on a daily basis; and
    - (ii) the care and attention needed by the young person are substantially more than are needed by a young person of the same age who does not have a physical, intellectual or psychiatric disability; and
  - (c) the young person is likely to need that care and attention permanently or for an extended period.
- (5) The fourth change is that paragraph 954(1)(c) is to be omitted.

**109 Application of liquid assets test waiting period for sickness allowance**

This Act, as amended by item 91 of Schedule 9 to the *Social Security Legislation Amendment (Youth Allowance Consequential and Related Measures) Act 1998*, applies to sickness allowance for which a claim was lodged on or after the commencement of that item.

**109A Application provision: amendments relating to the consistent treatment of lump sums**

This Act, as amended by Schedule 2 to the *Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 1998*, applies to a lump sum payment of a kind referred to in points 1067-H7B, 1067-H7C, 1067E-G9A, 1067E-G9B, 1068-G7B and 1068-G7C that a person becomes entitled to receive after 1 July 1998.

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**110 Youth allowance in place of newstart allowance (under 21 years), sickness allowance (under 21 years), youth training allowance and AUSTUDY living allowance (youth allowance age)**

*Continuing effect of certain determinations*

- (1) If a determination, notice, statement or other instrument made or given under this Act in relation to a newstart allowance or sickness allowance for a person under 21 years was in force, or had effect, immediately before 1 July 1998, then, subject to clause 114, the determination, notice, statement or other instrument:
  - (a) continues to be in force, or continues to have effect, on and after that day; and
  - (b) may be amended or revoked;as if it were a determination, notice, statement or other instrument made or given under this Act in relation to a youth allowance.
- (2) If a determination, notice, statement or other instrument made or given under the *Student Assistance Act 1973* in relation to a youth training allowance:
  - (a) was in force, or had effect; or
  - (b) is to be taken to have been in force, or to have had effect; immediately before 1 July 1998, that determination, notice, statement or other instrument:
    - (c) continues, or is taken to continue, to be in force or to have effect, on and after that day; and
    - (d) may be amended or revoked;as if it were a determination, notice, statement or other instrument made or given under this Act in relation to a youth allowance.

*Person of youth allowance age receiving AUSTUDY living allowance immediately before 1 July 1998*

- (3) If an AUSTUDY living allowance was payable, or is to be taken to have been payable, immediately before 1 July 1998, to or in respect of:
  - (a) a person who is of youth allowance age on that day; or

- (b) a person who, immediately before that day, was receiving rent assistance under regulation 102B of the AUSTUDY Regulations as then in force; or
  - (c) a person referred to in paragraph 68(a) or (b) of the AUSTUDY Regulations as in force immediately before that day;
- then, on and after that day:
- (d) a youth allowance is payable, or is to be taken to have been payable, to the person; and
  - (e) subject to subclause (4), Part 2.11 applies to the person; as if he or she had made a claim for youth allowance under that Part and the claim had been granted.
- (4) If:
- (a) youth allowance is payable, or is to be taken to have been payable, because of subclause (3), to a person referred to in paragraph (3)(b) or (c); and
  - (b) the person ceases to undertake the course of study that the person was undertaking immediately before 1 July 1998; youth allowance ceases to be payable to the person.
- (5) A person referred to in paragraph (3)(c) who is under 25 on 1 July 1998 is taken to be independent for the purposes of Parts 2.11 and 3.15.

*Pending claims of youth training allowance etc.*

- (6) If:
- (a) one of the following circumstances apply:
    - (i) a person lodged a claim for a youth training allowance (under the *Student Assistance Act 1973*) before 1 July 1998;
    - (ii) a person who is of youth allowance age lodged an application for an AUSTUDY living allowance (under the AUSTUDY regulations) before 1 July 1998;
    - (iii) a person who is under 21 years lodged a claim for newstart allowance or sickness allowance before 1 July 1998; and

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- (b) the claim was not determined, or the application dealt with, before that date;  
the claim or application has effect on or after that date as if it were a claim for youth allowance lodged under this Act.
- (7) Subclause (6) has effect subject to item 131 of Part 2 of Schedule 11 to the *Social Security Legislation (Youth Allowance Consequential and Related Measures) Act 1998*.

**111 Austudy payment in place of AUSTUDY living allowance**

*Person of austudy age receiving AUSTUDY living allowance immediately before 1 July 1998*

- (1) If:
- (a) an AUSTUDY living allowance was payable, or is to be taken to have been payable, immediately before 1 July 1998, to or in respect of a person other than:
    - (i) a person who, immediately before that day, was receiving rent assistance under regulation 102B of the AUSTUDY Regulations as then in force; or
    - (ii) a person referred to in paragraph 68(a) or (b) of the AUSTUDY Regulations as in force immediately before that day; and
  - (b) the person is of austudy age on that day;
- then, on and after that day:
- (c) an austudy payment is payable, or is to be taken to have been payable, to the person; and
  - (d) Part 2.11A applies to the person;
- as if he or she had made a claim for austudy payment under that Part and the claim had been granted.

Note: A youth allowance is payable to a person referred to in subparagraph (a)(i) or (ii) (see clause 109).

*Pending claims for AUSTUDY living allowance*

- (2) If:
- (a) a person who is of austudy age lodged an application for an AUSTUDY living allowance (under the AUSTUDY regulations) before 1 July 1998; and



(b) the application was not dealt with before that date;  
the application has effect on or after that date as if it were a claim  
for austudy payment lodged under this Act.

**111A \$3,000 opening balance for student income bank for students  
transferring from AUSTUDY**

- (1) If an AUSTUDY living allowance was payable, or is to be taken to have been payable, immediately before 1 July 1998, to or in respect of a person who is of youth allowance age on that day, then Step 1 of the Method Statement in point 1067G-J3 applies to the person as if the reference in that Step to zero were a reference to \$3,000.
- (2) If an AUSTUDY living allowance was payable, or is to be taken to have been payable, immediately before 1 July 1998, to or in respect of a person who is of austudy age on that day, then Step 1 of the Method Statement in point 1067L-E2 applies to the person as if the reference in that Step to zero were a reference to \$3,000.

**112 Pensioner education supplement under the Social Security Act  
in place of pensioner education supplement under the  
Austudy Regulations**

*Person receiving pensioner education supplement immediately  
before 1 July 1998*

- (1) If a pensioner education supplement under the AUSTUDY Regulations was payable, or is to be taken to have been payable, immediately before 1 July 1998, to a person, then, on and after that day:
  - (a) a pensioner education supplement under this Act is payable, or is to be taken to have been payable, to the person; and
  - (b) Part 2.24A applies to the person;as if he or she had made a claim for pensioner education supplement under that Part and the claim had been granted.

*Pending claims of pensioner education supplement*

- (2) If:

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- (a) a person lodged an application for a pensioner education supplement under the AUSTUDY Regulations before 1 July 1998; and
- (b) the application was not determined, or the application dealt with, before that date;

the application has effect on or after that date as if it were a claim for pensioner education supplement lodged under this Act.

**113 Certain persons receiving benefit PP (partnered) and pensioner education supplement immediately before 1 July 1998**

(1) If:

- (a) immediately before 20 March 1998, a person who satisfied the qualification requirements for sole parent pension under subparagraph 249(1)(a)(ii) or (iv) was receiving a sole parent pension; and
- (b) a benefit PP (partnered) became payable to the person on that day and continued to be payable until immediately before 1 July 1998; and
- (c) a pensioner education supplement under the AUSTUDY Regulations was payable, or is to be taken to have been payable, immediately before 1 July 1998, to the person;

then, on and after 1 July 1998:

- (d) a pensioner education supplement under this Act is payable, or is to be taken to have been payable, to the person; and
- (e) subject to subclauses (2), (3) and (4), Part 2.24A applies to the person;

as if he or she had made a claim for pensioner education supplement under that Part and the claim had been granted.

- (2) If the person ceases to undertake the course of study that the person was undertaking immediately before 1 July 1998, pensioner education supplement ceases to be payable to the person.

- (3) For the purposes of Part 2.24A, the person is taken to be receiving a payment attracting pensioner education supplement under this Act if the person satisfies the requirements referred to in subparagraph 249(1)(a)(ii) or (iv) as in force immediately before 20 March 1998.

Note: Subparagraphs 249(1)(a)(ii) and (iv) were repealed by the *Social Security Legislation Amendment (Parenting and Other Measures) Act 1997*.

- (4) For the purposes of Part 2.24A, subsection 1061PE(2) is taken to apply to the person.

**114 Claims for newstart allowance (under 21 years) or sickness allowance (under 21 years) made on or after 1 July 1998 in respect of period before that date**

If:

- (a) a person who is under 21 years lodges a claim for newstart allowance or sickness allowance on or after 1 July 1998; and
- (b) the claim is made in respect of a period commencing before 1 July 1998;

the claim has effect as if it had been made immediately before that date.

**115 Persons under 21 receiving newstart allowance or sickness allowance on 17 June 1997**

(1) If:

- (a) a person was, on 17 June 1997, under 21 years of age and a recipient of newstart allowance or sickness allowance; and
- (b) the person did not cease to be, and was immediately before 1 July 1998, a recipient of newstart allowance or sickness allowance; and
- (c) the person was, immediately before 1 July 1998, under 21 years of age;

then:

- (d) clause 109 does not apply in relation to the person; and
- (e) the person is to continue to receive the newstart allowance or sickness allowance on and after that day; and

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- (f) subject to subclauses (2) and (3), Part 2.12 or 2.14 (as the case may be) as in force immediately before that day continues to apply to the person.
- (2) If, on or after 1 July 1998, the Secretary cancels or suspends:
  - (a) a person's newstart allowance under section 660I or 660IA; or
  - (b) a person's sickness allowance under section 728L or 728M; a determination by the Secretary under section 660J or 728P (as the case may be) that the allowance is payable to the person does not have effect unless the determination is made within 6 weeks after the Secretary's decision to cancel or suspend the allowance.
- (3) Newstart allowance or sickness allowance ceases to be payable to a person who has been receiving it because of subclause (1) if the person makes a claim for youth allowance and the claim is granted.

**116 Newstart or sickness allowance bereavement payment in respect of death of partner**

If:

- (a) immediately before 1 July 1998:
  - (i) a person was qualified for a payment under Division 9 of Part 2.12 or Division 9 of Part 2.14; and
  - (ii) the period for which the person was qualified had not yet ended; and
- (b) the person is under 21 years;

then:

- (c) the person remains qualified for that payment on and after 1 July 1998 as if:
  - (i) in the case of a person qualified for a payment under Division 9 of Part 2.12—that Part and Part 3.5 or 3.6 (whichever was applicable), as in force immediately before that date, continued to apply to him or her; or
  - (ii) in the case of a person qualified for a payment under Division 9 of Part 2.14—that Part and Part 3.5, 3.5A or 3.6 (whichever is applicable), as in force immediately before that date, continued to apply to him or her; and

- (d) subclause 109(1) (dealing with continuing effect of determinations) does not apply to the person; and
- (e) on the day after the end of the period referred to in subparagraph (a)(ii), the person is taken to have made a claim for youth allowance.

**117 Youth training allowance bereavement payment in respect of death of partner**

If, immediately before 1 July 1998:

- (a) a person was qualified for a payment under Division 10 of Part 8 of the *Student Assistance Act 1973*; and
- (b) the period for which the person was qualified had not yet ended;

then:

- (c) the person remains qualified for that payment on and after 1 July 1998 as if Part 8 of, and Schedule 1 to, that Act as in force immediately before that date were still in force; and
- (d) subclause 109(1) (dealing with continuing effect of determinations) does not apply to the person; and
- (e) on the day after the end of the period referred to in paragraph (b), the person is taken to have made a claim for youth allowance.

**118 Qualification for double orphan pension for certain young persons who were qualified to receive payments under the AUSTUDY scheme immediately before 1 July 1998**

If a person or an approved care organisation was, immediately before 1 July 1998, qualified (under section 999) for a double orphan pension for a young person who, at the time:

- (a) was over 16, but under 22, years of age; and
- (b) was qualified to receive payments under the AUSTUDY scheme;

the person or approved care organisation continues to be qualified for a double orphan pension for the young person until the young person:

- (c) turns 22; or

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- (d) ceases to be a youth allowance recipient; or
  - (e) ceases to undertake full-time study;
- whichever occurs first.

**119 Payment of family allowance—young person ceasing to be a FA child on becoming youth allowance recipient**

If:

- (a) on the last family allowance payday before 1 July 1998, a person (the *FA recipient*) received an instalment of family allowance (the *relevant instalment*) that was paid to the person at a rate higher than the person's minimum family allowance rate; and
- (b) the relevant instalment consisted of, or included, an amount in respect of an FA child (the *young person*) who becomes a youth allowance recipient before the first family allowance payday after 1 July 1998;

there is payable to the FA recipient in respect of the young person, on the first family allowance payday after 1 July 1998, an amount of family allowance equal to the amount of family allowance that was payable to the FA recipient in respect of the young person on the last family allowance payday before 1 July 1998.

**120 Application—income maintenance period rules**

- (1) Point 1067G-H11 (dealing with income maintenance periods in relation to continuing employment) applies to the following persons in respect of a leave period starting on or after 1 July 1998:
  - (a) a person who makes a claim for youth allowance on or after 1 July 1998 and to whom subclause (2) does not apply;
  - (b) a youth allowance recipient who immediately before 1 July 1998 was receiving an AUSTUDY allowance.
- (2) If:
  - (a) a determination applying an income maintenance period to a person who was or is in employment had effect, or is to be taken to have had effect, immediately before 1 July 1998; and

- (b) a youth allowance becomes payable to the person on or after 1 July 1998; and
  - (c) the income maintenance period has not ended when the youth allowance becomes payable to the person;

point 1067G-H11 (dealing with income maintenance periods in relation to continuing employment) applies to the person in respect of a leave period starting on or after 20 March 1998.
- (3) Point 1067G-H12 (dealing with income maintenance periods in relation to terminated employment) applies to the following persons in respect of any leave payment received by those persons on or after 1 July 1998:
  - (a) a person who makes a claim for youth allowance on or after 1 July 1998 and to whom subclause (4) does not apply;
  - (b) a youth allowance recipient who immediately before 1 July 1998 was receiving an AUSTUDY allowance.
- (4) If:
  - (a) a determination applying an income maintenance period to a person whose employment has been terminated had effect, or is to be taken to have had effect, immediately before 1 July 1998; and
  - (b) a youth allowance becomes payable to the person on or after 1 July 1998; and
  - (c) the income maintenance period has not ended when the youth allowance becomes payable to the person;

point 1067G-H12 (dealing with income maintenance periods in relation to terminated employment) applies to the person in respect of any leave payment received by the person on or after 20 September 1997.
- (5) Point 1067L-D5 (dealing with income maintenance periods in relation to continuing employment) applies to the following persons in respect of a leave period starting on or after 1 July 1998:
  - (a) a person who makes a claim for austudy payment on or after 1 July 1998 and to whom subclause (6) does not apply;
  - (b) an austudy payment recipient who immediately before 1 July 1998 was receiving an AUSTUDY allowance.

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(6) If:

- (a) a determination applying an income maintenance period to a person who was or is in employment had effect, or is to be taken to have had effect, immediately before 1 July 1998; and
- (b) an austudy payment becomes payable to the person on or after 1 July 1998; and
- (c) the income maintenance period has not ended when the austudy payment becomes payable to the person;

point 1067L-D5 (dealing with income maintenance periods in relation to continuing employment) applies to the person in respect of a leave period starting on or after 20 March 1998.

(7) Point 1067L-D6 (dealing with income maintenance periods in relation to terminated employment) applies to the following persons in respect of any leave payment received by those persons on or after 1 July 1998:

- (a) a person who makes a claim for austudy payment on or after 1 July 1998 and to whom subclause (8) does not apply;
- (b) an austudy payment recipient who immediately before 1 July 1998 was receiving an AUSTUDY allowance.

(8) If:

- (a) a determination applying an income maintenance period to a person whose employment has been terminated had effect, or is to be taken to have had effect, immediately before 1 July 1998; and
- (b) an austudy payment becomes payable to the person on or after 1 July 1998; and
- (c) the income maintenance period has not ended when the austudy payment becomes payable to the person;

point 1067L-D6 (dealing with income maintenance periods in relation to terminated employment) applies to the person in respect of any leave payment received by the person on or after 20 September 1997.



**120A Amendments relating to treatment of income streams**

- (1) If:
- (a) a person who had entered into a binding arrangement for the provision to the person of an income stream was, on 19 September 1998, receiving a social security payment; and
  - (b) the Minister declares, in writing, that the Minister is satisfied that the application of this Act (as amended by the amending Act) would cause the person significant disadvantage in relation to the treatment of the person's income stream;
- this Act applies to the person in relation to the income stream as if the amendments made by Part 1 of Schedule 3 to the amending Act had not been made.
- (2) Subclause (1) ceases to have effect if:
- (a) the social security payment referred to in subclause (1)(a) (the *original payment*) ceases to be payable to the person; and
  - (b) another social security payment, a service pension or income support supplement does not become payable to the person immediately after the original payment ceases to be payable.
- (3) If a person was receiving a social security payment on 19 September 1998, the person's annual rate of ordinary income from:
- (a) an asset-test exempt income stream; or
  - (b) an asset-tested income stream (long term);
- that is a defined benefit income stream whose commencement day is earlier than 20 September 1998 is to be worked out as if the amendment made by item 40 of Schedule 3 to the amending Act had not been made.
- (4) In this clause:

*amending Act* means the *Social Security and Veterans' Affairs Legislation Amendment (Budget and Other Measures) Act 1998*.

*binding arrangement*, in relation to a person, means:

- (a) an arrangement that does not allow the person to commute an income stream; or

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- (b) an arrangement that may only be terminated on terms that are, in the opinion of the Secretary, likely to cause severe detriment to the person.

**122 Issue of notice before 1 July 1999 to person to whom domiciliary nursing care benefit is being paid requiring notification of events affecting the payment of carer allowance on and after that day**

- (1) The Secretary may, during the period from the start of the day on which the *Assistance for Carers Legislation Amendment Act 1999* receives the Royal Assent until the end of 30 June 1999, give a person (the *DNCB recipient*) to whom domiciliary nursing care benefit under Part VB of the *National Health Act 1953* is being paid a notice in the same terms as could be given under section 984 of this Act on or after 1 July 1999 to a person to whom carer allowance is being paid. The notice only has effect as mentioned in subclause (2).
- (2) If, because of the operation of subclause 124(7), carer allowance becomes payable to the DNCB recipient on and after 1 July 1999, the notice has effect on and after that day as if it were given under section 984 of this Act on that day.

Note: Section 984 of this Act allows the Secretary to give a person to whom carer allowance is being paid a notice requiring the person to inform the Department of an event or change in circumstances that might affect the payment of carer allowance.

**123 Carer payment provisions (changes to “severely handicapped person” category with effect from 1 July 1999)**

If a determination, notice, statement or instrument made or given under Part 2.5 of this Act had effect immediately before 1 July 1999 (whether made or given before, on or after that day), it continues to have effect on and after that day despite the amendments made by Part 1 of Schedule 1 to the *Assistance for Carers Legislation Amendment Act 1999*.

Note: Carer payments that continue to be payable because of this clause would be able to be terminated later e.g. under section 231.

## **124 Carer allowance (changes introduced on 1 July 1999)**

*Continuing effect of determinations etc. effective before  
1 July 1999*

- (1) If a determination, notice, statement or other instrument made or given under this Act in relation to child disability allowance had effect immediately before 1 July 1999 (whether made or given before, on or after that day), it continues to have effect on and after that day as if it had been made or given under this Act in relation to carer allowance.

Note: A determination that carer allowance is payable to a person ceases to have effect if the Secretary becomes satisfied that the allowance is no longer payable and determines that the allowance is to be cancelled or suspended: see sections 992C and 992D.

*Pending claims for child disability allowance*

- (2) If:
- (a) a person lodged a claim for child disability allowance under this Act before 1 July 1999 (including because of subclause (3) or (4)); and
  - (b) the claim was not determined before that day; and
  - (c) the Secretary later determines that the claim is not to be granted;

the claim has effect on and after 1 July 1999 as if it were a claim for carer allowance made under this Act.

*Claims made on or after 1 July 1999 for child disability allowance*

- (3) If a person lodges a claim for child disability allowance on or after 1 July 1999, the claim has effect as if it had been made immediately before 1 July 1999.

*Claims made on or after 1 July 1999 in respect of qualification  
before 1 July 1999—carer allowance*

- (4) If:
- (a) a person lodges a claim for carer allowance in respect of a disabled child or 2 disabled children on or after 1 July 1999; and

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- (b) if the amendments made by Schedule 2 to the *Assistance for Carers Legislation Amendment Act 1999* had not been made, the claim could have been made in respect of qualification for child disability allowance for a period before 1 July 1999;

the claim has effect:

- (c) as if it had been made immediately before 1 July 1999; and  
(d) as if it were a claim for child disability allowance.

*Child disability allowance bereavement payment in respect of death of child*

- (5) If, immediately before 1 July 1999, a person was qualified for child disability allowance for a period under section 991 or 992AA of this Act as in force immediately before that day, the person continues to be qualified for child disability allowance for that period on and after 1 July 1999 as if the amendments made by Schedule 2 to the *Assistance for Carers Legislation Amendment Act 1999* had not been made.

*Effect of overseas absence before 1 July 1999*

- (6) If:
- (a) immediately before 1 July 1999, child disability allowance was payable to a person for a CDA child or for 2 dependent children in circumstances where the person or the child or children were absent from Australia; and
- (b) that absence from Australia continues on and after 1 July 1999; and
- (c) before the end of the period of 26 weeks beginning on 1 July 1999, the period of that absence from Australia exceeds 3 years; and
- (d) immediately before the end of those 3 years, carer allowance is payable to the person for the child or children;
- carer allowance ceases to be payable to the person for the child or children at the end of those 3 years.

*Domiciliary nursing care benefit payable to a person immediately before 1 July 1999*

- (7) If domiciliary nursing care benefit under Part VB of the *National Health Act 1953* was payable, or is taken to have been payable, immediately before 1 July 1999 to a person in relation to a patient, then, on and after that day:
- (a) carer allowance is payable to the person for the patient; and
  - (b) Part 2.19 of this Act applies to the person;
- as if he or she had made a claim for carer allowance under Part 2.19 of this Act and the claim had been granted.

*Pending claims for domiciliary nursing care benefit—application to Secretary to the Health Department*

- (8) If:
- (a) before 1 July 1999, a person made an application under Part VB of the *National Health Act 1953* for approval as an approved person for the purposes of that Part in relation to a patient; and
  - (b) the Secretary to the Health Department had not dealt with the application before that day; and
  - (c) the Secretary to the Health Department later refuses the application;
- the application has effect on and after 1 July 1999 as if it were a claim for carer allowance lodged under this Act.

*Pending claims for domiciliary nursing care benefit—review by Health Minister*

- (9) If:
- (a) before 1 July 1999, a person made a request to the Health Minister under section 58F of the *National Health Act 1953* for a review of a decision of the Secretary to the Health Department refusing the person's application for approval as an approved person for the purposes of Part VB of that Act; and
  - (b) the Health Minister had not dealt with the request before that day; and

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(c) the Health Minister later confirms the decision of the Secretary to the Health Department;

the person is taken to have made a claim for carer allowance on 1 July 1999 under Part 2.19 of this Act, and that claim is taken to have contained any information in the application mentioned in paragraph (a).

*Decision of Health Minister in relation to domiciliary nursing care benefit*

(10) If:

(a) under item 3 of Schedule 3 to the *Assistance for Carers Legislation Amendment Act 1999*, the Health Minister is required to deal with a request to review a decision of the Secretary to the Health Department to refuse a person's application for approval as an approved person for the purposes of Part VB of the *National Health Act 1953*; and

(b) the Health Minister confirms the decision of the Secretary to the Health Department;

the person is taken to have made a claim for carer allowance on 1 July 1999 under Part 2.19 of this Act, and that claim is taken to have contained any information in the application mentioned in paragraph (a).

*Preserving the no residency requirement for domiciliary nursing care benefit*

(11) If:

(a) domiciliary nursing care benefit under Part VB of the *National Health Act 1953* was payable, or is to be taken to have been payable, immediately before 1 July 1999 to a person in relation to a patient; and

(b) immediately before that day, the person or the patient was not an Australian resident;

then Part 2.19 of this Act as in force on and after that day has effect as if the person or the patient, as the case may be, were an Australian resident.

*Definitions*

(12) In this clause:

**Health Department** means the Department administered by the Health Minister.

**Health Minister** means the Minister administering the *National Health Act 1953*.

**125 Transitional regulations arising out of carer allowance changes introduced on 1 July 1999**

Regulations made under section 1364 may prescribe matters in relation to any transitional matters (including prescribing any saving or application provision) arising out of amendments of this Act made by Schedule 2 to the *Assistance for Carers Legislation Amendment Act 1999*.

**121 Changes to newly arrived resident's waiting period**

If a person is subject to a newly arrived resident's waiting period immediately before the commencement of Schedule 5 to the *Further 1998 Budget Measures Legislation Amendment (Social Security) Act 1999* (the **amending Act**), this Act continues to apply to the person in relation to the waiting period as if the amendments made by the amending Act had not been made.

**126 Application and transitional provisions relating to fares allowance**

- (1) Part 2.26 applies only in respect of claims for fares allowance made after the commencement of that Part for journeys made after that commencement.
- (2) The Social Security (Fares Allowance) Rules 1998 made under section 1061ZAAA as in force immediately before the commencement of Part 2.26 continue in force as if that section were still in force but apply only in respect of claims made, whether before or after that commencement, for journeys made before that commencement.

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(3) If:

- (a) a person has, before the commencement of Part 2.26, made a journey in a study year; and
- (b) the person is eligible, under the Rules referred to in subclause (2), as they continue in force under that subclause (the *continuing Rules*) for fares allowance in respect of the journey; and
- (c) the person makes a claim under Part 2.26 for fares allowance in respect of a journey made, or to be made, after the commencement of that Part in the same study year;

the claim is not to be determined until the person has made a claim under the continuing Rules in respect of the journey referred to in paragraph (a) and the claim has been finally dealt with in accordance with those Rules.

**127 Seasonal work carried out in what would have been a seasonal work non-benefit period extending beyond 30 June 2000**

If:

- (a) a person was, before 1 July 2000, subject to a seasonal work non-benefit period under this Act; and
- (b) but for the amendments of this Act taking effect on that day, the seasonal work non-benefit period would have extended for a period (the *residual period*) starting on 1 July 2000 and ending at the end of that seasonal work non-benefit period;

then, for the purposes of this Act as in force on and after that day, the residual period is to be treated as if it were a seasonal work preclusion period.

**128 Saving provision—portability rules relating to rates of pension**

Despite the amendments of sections 1213A, 1215, 1216, 1220A, 1220B and 1221 of this Act made by the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*, if:

- (a) a person was absent from Australia immediately before 20 September 2000; and



- (b) at a time (the *post-start time*) after 20 September 2000, the person had not returned to Australia for a continuous period of 26 weeks or more since 20 September 2000;
- those provisions continue to apply to the person at the post-start time as if those amendments had not been made.

### **129 Application of amendments relating to short residence**

Despite the amendments of section 1220 of this Act made by the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*, that section, as in force immediately before 20 September 2000, continues to apply to a pension or allowance granted before 20 September 2000 as if those amendments had not been made.

### **130 Saving provision—other portability rules**

Despite the amendments of this Act made by Part 1 of Schedule 1 to the *Social Security and Veterans' Entitlements Legislation Amendment (Miscellaneous Matters) Act 2000*, other than:

- (a) the amendments mentioned in clauses 128 and 129 of this Schedule; and
  - (b) the amendments of sections 1216B, 1218, 1218A, 1218B, 1218C and 1219; and
  - (c) the amendment of Module A of the Rate Calculator at the end of section 1221;
- if:
- (d) a person was absent from Australia immediately before 20 September 2000; and
  - (e) at a time (the *post-start time*) after 20 September 2000, the person had not returned to Australia since 20 September 2000;

this Act continues to apply to the person at the post-start time as if the amendments (other than those mentioned in paragraphs (a) to (c)) had not been made.

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**131 Certain payments not recoverable**

An amount paid to a person under this Act is not recoverable from the person if:

- (a) the amount was not payable because the person, or the person's partner, had received a comparable foreign payment; and
- (b) during the period beginning on 20 September 2000 and ending on 19 January 2001, the person gave notice to the Secretary of any comparable foreign payment which he or she had received or was receiving; and
- (c) the amount was paid before the person gave notice as mentioned in paragraph (b); and
- (d) before receiving that notice, the Secretary was unaware that the person, or the person's partner, had received or was receiving the comparable foreign payment.

**132 Saving—ABSTUDY recipients**

- (1) If, immediately before 1 January 2001, a person was receiving:
  - (a) a relevant pension; and
  - (b) a payment under a provision of the ABSTUDY Scheme made on the basis that the person was a full-time student;this clause applies to the person.
- (2) In spite of the amendments of this Act made by Schedule 1 to the *Family and Community Services (2000 Budget and Related Measures) Act 2000*:
  - (a) the person does not cease to be qualified for the relevant pension by reason only of those amendments; and
  - (b) if the person continues, on and after 1 January 2001, to receive the same payment under the ABSTUDY Scheme, that payment (except where it is a payment of a pensioner education supplement) is to be taken, for the purposes of this Act, to be income paid to, or on behalf of, the person.
- (3) In this clause:

*relevant pension* means:

  - (a) age pension; or

- (b) bereavement allowance; or
- (c) carer payment; or
- (d) disability support pension; or
- (e) pension PP (single); or
- (f) widow B pension; or
- (g) wife pension.

### **133 Meaning of *Australian resident***

For the purposes of determining whether a person was an Australian resident at a time, or throughout a period, occurring before the commencement of item 2 of Schedule 1 to the *Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001*:

- (a) the definition of ***Australian resident*** at that time, or throughout that period, applies; and
- (b) that definition, as amended by the *Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001*, does not apply.

### **134 Transitional and saving provisions—substitution of Part 3.14**

- (1) In this clause:

***2001 amending Act*** means the *Family and Community Services Legislation (Simplification and Other Measures) Act 2001*.

***new Act*** means this Act, as amended by the 2001 amending Act.

***old Act*** means this Act, as in force immediately before 20 September 2001.

***old lump sum preclusion period*** has the same meaning as in the old Act.

- (2) Part 3.14 of the new Act has effect subject to this clause.
- (3) Subject to subclause (9), if:
- (a) before 20 September 2001, because of the operation of subsection 1165(1A) or (2AA) of the old Act, a social

**Schedule 1A** Savings and transitional provisions

**Part 3** Saving and Transitional Provisions Applicable after the Commencement of this Act

**Module D** Supplementary Amount for Member of Couple in Some Circumstances

Clause 134

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security payment had ceased to be payable to a person for a period; and

- (b) if the provisions of the old Act had continued in force on and after 20 September 2001, the payment would not have become payable again until a time on or after that date;

then, on and after 20 September 2001, the new Act has effect as if:

- (c) the new Act had been in operation when the social security payment ceased to be payable for the period; and

- (d) the social security payment had so ceased because of the operation of subsection 1169(1) of the new Act.

- (4) Subject to subclause (9), if:

- (a) before 20 September 2001, because of the operation of a provision of the old Act specified in the table in subclause (8), the rate at which a social security payment was payable to a person was reduced for a period; and

- (b) if the provisions of the old Act had continued in force on and after 20 September 2001, the payment would have continued to be payable at the reduced rate until a time on or after that date;

then, on and after 20 September 2001, the new Act has effect as if:

- (c) the new Act had been in operation when the social security payment became payable at the reduced rate; and

- (d) the social security payment had become so payable because of the operation of the corresponding provision of the new Act.

- (5) If a notice to which this subclause applies was in effect immediately before 20 September 2001, the new Act has effect, on and after 20 September 2001, as if:

- (a) the new Act had been in operation when the notice was given; and

- (b) the notice had been given under the provision of the new Act that corresponds to the provision of the old Act under which the notice was given.

- (6) Subclause (5) applies to the following notices:

- (a) a notice under subsection 1166(1) of the old Act in relation to a recoverable amount calculated under subsection 1166(3), (4) or (4C) of that Act;
  - (b) a notice under subsection 1170(1) of the old Act in relation to a recoverable amount calculated under subsection 1170(3) or (4) of that Act;
  - (c) a notice under subsection 1172(1) of the old Act;
  - (d) a notice under subsection 1174(1) of the old Act in relation to a recoverable amount calculated under subsection 1174(6) of that Act;
  - (e) a notice under subsection 1177(1) of the old Act;
  - (f) a notice under subsection 1179(1) of the old Act in relation to a recoverable amount calculated under subsection 1179(6) of that Act.
- (7) If:
- (a) before 20 September 2001, a person applied, under section 129, 142 or 179 of the Administration Act, for review of a decision made as a result of the operation of a provision of the old Act specified in column 2 of an item in the table in subclause (8); and
  - (b) the review was not determined before 20 September 2001; then, on and after 20 September 2001, the review is to be determined in accordance with this Act, as in force when the decision was made.
- (8) The provision of the new Act that corresponds, for the purposes of this clause, to the provision of the old Act specified in column 2 of an item of the following table is the provision specified in column 3 of the item.

<b>Corresponding provisions</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Old Act provision</b>	<b>Corresponding new Act provision</b>
1	Subsection 1165(1A)	Subsection 1169(1)
2	Subsection 1165(2AA)	Subsection 1169(1)
3	Subsection 1166(1)	Subsection 1178(1)

**Schedule 1A** Savings and transitional provisions

**Part 3** Saving and Transitional Provisions Applicable after the Commencement of this Act

**Module D** Supplementary Amount for Member of Couple in Some Circumstances

Clause 134

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<b>Corresponding provisions</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Old Act provision</b>	<b>Corresponding new Act provision</b>
4	Subsection 1168(1) (except to the extent that it operated in relation to a person's social security payment where the person's partner, but not the person, had received compensation)	Subsection 1173(1)
5	Subsection 1170(1)	Subsection 1180(1)
6	Subsection 1172(1)	Subsection 1182(1)
7	Subsection 1174(1)	Subsection 1184(1)
8	Subsection 1177(1)	Subsection 1182(2)
9	Subsection 1179(1)	Subsection 1184(2)
10	Section 1184	Section 1184K

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(9) On and after 20 September 2001:

(a) the new Act has effect as if:

(i) it included provisions in the same terms as subsection 17(1) of the old Act to the extent that it defines *average weekly earnings* and subsections 1165(1) and (2), 1166(4A), 1174(4) and (5), and 1179(4) and (5) of the old Act; and

(ii) section 1169 of the new Act did not apply where the lump sum compensation payment was received before 20 March 1997; and

(b) for the purposes of the operation of paragraph (a), *old lump sum preclusion period* is taken to have the same meaning in the new Act as in the old Act; and

(c) for the purposes of the operation of paragraph (a), the lump sum preclusion period, for the purposes of the new Act, is the period that corresponds to the old lump sum preclusion period.

(10) If:

- (a) a person received compensation before 1 January 1993; and
- (b) the person's partner (the *partner*) claimed or received carer pension before that date because the partner was caring for the person;

this Act, as it applied in relation to carer payment being received by the partner immediately before 20 September 2001, continues to apply in relation to carer payment received by the partner before, on or after 20 September 2001 because the partner was or is caring for the person.

(11) If:

- (a) before 20 September 2001, a person was given a notice under Subdivision B of Division 6 of Part 3, or Division 1 of Part 5, of the Administration Act; and
- (b) the notice required the person:
  - (i) to inform the Department whether a specified event or change of circumstances had occurred; or
  - (ii) to give the Department a statement about a matter; or
  - (iii) to give information or produce a document; and
- (c) the notice required the information or statement to be given within a specified period; and
- (d) the person has failed to comply with the requirement of the notice;

any determination made under the Administration Act on or after 20 September 2001 as a result of the occurrence of an event or change of circumstances, or in connection with a matter, to which the notice related must be made in accordance with this Act as in force immediately before the end of the period referred to in paragraph (c).

**Schedule 1B—Tables for the assessment of  
work-related impairment for  
disability support pension**

TABLES  
FOR THE  
ASSESSMENT  
OF  
WORK-RELATED IMPAIRMENT  
FOR  
DISABILITY SUPPORT  
PENSION  
  
*DEPARTMENT OF SOCIAL SECURITY  
1997*



## **INTRODUCTION**

1. These Tables are designed to assess whether persons whose qualification or otherwise for disability support pension is being considered meet an empirically agreed threshold in relation to the effect of their impairments, if any, on their ability to work. Work is defined in section 94(5) of the Social Security Act 1991. The Tables represent an empirically agreed set of criteria for assessing the severity of functional limitations for work related tasks and do not take into account the broader impact of a functional impairment in a societal sense. For this reason, no specific adjustments are made for age and gender. The outcome of the application of these Tables following a medical assessment is termed work-related impairment and this term is used throughout this document.

2. These Tables are designed to assess impairment in relation to work and consist of system based tables that assign ratings in proportion to the severity of the impact of the medical conditions on normal function as they relate to work performance. These Tables are function based rather than diagnosis based. The Medical Officer should not approach the Tables hoping to find various conditions listed for which he or she can read off a rating. One of the skills which needs to be developed in order to assess impairment in this context is the ability to select the appropriate tables. The question which must be asked in each and every case is "which body systems have a functional impairment due to this condition?"

3. These Tables give particular emphasis to the loss of functional capacity that a person experiences in relation to work. This is measured by reference to an individual's efficiency in performing a set of defined functions in comparison with a fully able person. In using these tables ratings can only be assigned for conditions where there is an associated current loss of function or where prolonged loss of function would be expected in most work situations.

4. A rating is only to be assigned after a comprehensive history and examination. For a rating to be assigned the condition must be a fully documented, diagnosed condition which has been investigated, treated and stabilised. The first step is thus to establish a working diagnosis based on the best available evidence. Arrangements should be made for investigation of poorly defined conditions before considering assigning an impairment rating. In particular where the nature or severity of a psychiatric (or intellectual) disorder is unclear appropriate investigation should be arranged.

5. The condition must be considered to be permanent. Once a condition has been diagnosed, treated and stabilised, it is accepted as being permanent if in the light of available evidence it is more likely than not that it will persist for the foreseeable future. This will be taken as lasting for more than two years. A condition may be considered fully stabilised if it is unlikely that there will be any significant functional improvement, with or without reasonable treatment, within the next 2 years.

6. In order to assess whether a condition is fully diagnosed, treated and stabilised, one must consider:

- what treatment or rehabilitation has occurred;
- whether treatment is still continuing or is planned in the near future;
- whether any further reasonable medical treatment is likely to lead to significant functional improvement within the next 2 years.

In this context, reasonable treatment is taken to be:

- treatment that is feasible and accessible ie, available locally at a reasonable cost;
- where a substantial improvement can reliably be expected and where the treatment or procedure is of a type regularly undertaken or performed, with a high success rate and low risk to the patient.

It is assumed that a person will generally wish to pursue any reasonable treatment that will improve or alleviate an impairment, unless that treatment has associated risks or side effects which are unacceptable to the person. In those cases where significant functional improvement is not expected or where there is a medical or other compelling reason for a person not undertaking further treatment, it may be reasonable to consider the condition stabilised.

In exceptional circumstances, where a condition was considered not stabilised and a permanent impairment rating not assigned because reasonable treatment for a specific condition has not been undertaken, the medical officer should:

- evaluate and document the probable outcome of treatment and the main risks and or side effects of the treatment; and
- indicate why this treatment is reasonable; and
- note the reasons why the person has chosen not to have treatment.

7. A single medical condition should be assessed on all relevant Tables when that medical condition is causing a separate loss of function in more than one body system. For example, Diabetes Mellitus may need to be assessed using the endocrine (19), exercise tolerance (1), lower limb function (4), renal function (17), skin disorders (18) and visual acuity (13) tables. When using more than one Table for a single medical condition the possibility of double assessment of a single loss of function must be guarded against. For example, it is inappropriate to assess an isolated spinal condition under both the spine table (5) and the lower limb table (4) unless there is a definite secondary neurological deficit in a lower limb or limbs.

8. In general, pain or fatigue should be assessed in terms of the underlying medical condition which causes it. For example, Table 5 should be used for spinal pathology. However, where the medical officer is of the opinion that the Tables underestimate the level of disability because of the presence of chronic entrenched pain, Table 20 can be used to assign a rating **instead** of the Table(s) that otherwise would be used to assess the loss of function to which the pain relates. Medical officers must use their clinical judgement and be convinced that pain or fatigue is a significant factor contributing towards the person's overall functional impairment. Medical reports and the person's history should consistently indicate the presence of chronic entrenched pain or fatigue.

9. Always use a Table specific to the functional impairment being rated unless the instructions in a section specify otherwise. The system-specific Tables provide appropriate criteria with which to rate a disorder. The procedure is to identify the loss of function, refer to the appropriate system Table and identify the correct rating eg. a person with a CVA (stroke) could be assessed under five different Tables: upper and lower limbs (3 and 4), neurological (8 and 9) and visual field disorders (15). Table selection would depend on the functions affected.

10. Ratings can only be assigned in accordance with the rating scores in each Table. Ratings cannot be assigned between consecutive ratings (eg. a rating of fifteen cannot be assigned between ten and twenty). Nor can ratings be assigned in excess of the maximum rating specified by each Table (eg. if the maximum rating for a Table is 30, the medical officer cannot assign a greater rating than this figure). Ratings must be consistent with these Tables. No idiosyncratic assessment systems are allowed.

11. The scaling system for the Tables is based on points allocation with the number alongside each impairment descriptor representing the number of points to be allocated for that impairment. Ratings between Tables are not always comparable although the ratings have been allocated on the basis of the likely impact of an impairment on work ability. Where more than one impairment is present, separate scores are allotted for each and **the values are added together** giving a combined work-related impairment rating.

12. A medical condition such as Vascular disease (Stroke) may cause brain damage to different parts of the brain eg. damage to the cortex causing cognitive/comprehension impairments, damage to the speech centre causing aphasia (receptive or expressive communication impairments) and damage to the motor centre causing hemiparesis. Each separate or additional loss of function must be assessed under the relevant Table(s), in this case Tables 8, 9, 3 and 4. This is **not** double counting (also see paragraph 7). Double counting is where one functional loss is counted twice. For instance, where a condition causes a cognitive impairment, the presence of mental confusion may suggest an extra communication impairment. However, if the speech centre of the brain is undamaged, the overall situation is regarded as a single impairment.

13. These Tables have been scaled so that where two conditions cause a common or a combined functional loss, a single rating should be assigned for both conditions and this should reflect the combined loss of function from each of the two conditions. For example, the presence of both heart disease and chronic lung disease may each cause difficulty with breathing and reduced effort tolerance. The overall loss of function is a combined or common effect with a contribution from each condition. In this case a single impairment rating is assigned based on overall reduction in effort tolerance using Table 1.

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**TABLE 1. LOSS OF CARDIOVASCULAR AND/OR RESPIRATORY FUNCTION: EXERCISE TOLERANCE**

Cardiovascular and Respiratory function is measured by reference to exercise tolerance. A rating is obtained from Table 1 by determining the lowest MET band which causes restriction in activity from a cardiac or respiratory condition. 1 MET is defined as average oxygen consumption at rest which is 3.5mL O<sub>2</sub>/kg/min.

The clinical judgement of medical officers based on history and examination is to be used but in cases where a reliable history is difficult to obtain despite discussions with the treating doctor or the history of exercise tolerance is inconsistent with clinical findings on examination, the results of an Exercise ECG or Respiratory Function Test may be obtained.

The appropriate MET level is calculated using the lists in Table 1.2.

Peripheral Vascular Disease is assessed under the lower limb Table 4.

Varicose veins are assessed under either the Lower Limb or Skin Table.

Hypertension is assessed under Table 20. Where exercise intolerance is caused by a combination of cardiac and respiratory conditions, Table 1 is to be used and used only once. Episodic conditions such as cardiac arrhythmias and episodic asthma should be assessed under Table 21 unless they are exercise induced.

**Assignment of rating**

<b>Rating</b>	<b>Symptomatic Activity Level (METs)</b>
NIL	7-8 or higher
FIVE	6-7
FIFTEEN	5-6
TWENTY	4-5
THIRTY	3-4
FORTY	2-3 or less

**TABLE 1.2 Metabolic cost of activities**

**INSTRUCTIONS**

Listed below is a more comprehensive set of activities, with their corresponding MET level. One MET represents the energy level expenditure associated with the consumption of 3.5ml O<sub>2</sub>/kg body weight/minute. Please use this list to assist you in determining an appropriate symptomatic MET level for the claimant.

In determining the symptomatic activity level, greater reliance is placed on activities which involve a steady expenditure of energy (eg. walking steadily for 10 minutes) as opposed to a sporadic expenditure of energy (eg. playing one hole of golf). The former activities are more reliable indicators of exercise tolerance. Less reliance is placed on activities which can be completed in less than a few minutes, as symptoms may take longer than this to occur.

**Metabolic Cost of Activities**

1—2 METs Energy expended at rest or minimal activity

Lying down	sitting and drinking tea	using sewing machine ( <i>electric</i> )
sitting down	sitting and talking on telephone	travelling in a car as passenger
strolling ( <i>slowly</i> )	standing	typing
sitting and knitting		

2—3 METs Energy expended to dress, wash and perform light household duties

Walking 3.5km/hr ( <i>slowly</i> )	playing piano/violin/organ	clerical work which involves moving around
setting table	playing billiards	
washing dishes	driving power boat	bench assembly work ( <i>sitting</i> )
dressng	light sweeping	using self-propelled mower
light tidying, dusting	horseback riding at walk	polishing silver
driving a car	lawn bowls	making bed
cooking, preparing meals		

3—4 METs Energy required for walking at average pace

Walking 5km/hr ( <i>average walking pace</i> )	vacuuming sedate cycling (10km/hr)	machine assembly minor car repairs
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**Metabolic Cost of Activities**

shifting chairs	light gardening (weed/water)	light carpentry ( <i>chiselling, hammering, sawing and planing with hand tools</i> )
hanging out washing	playing golf ( <i>with power buggy</i> )	
tidying house ( <i>includes carrying heavy objects</i> )	welding	

4—5 METs Moderate activities: encompasses more active daily activities with the exclusion of manual labour and vigorous exercise

Mopping floors	gentle swimming	stocking shelves with light objects
golf ( <i>pulling buggy, carrying bag</i> )	ballroom dancing	painting outside of house
beating carpets	stacking firewood	wallpapering
polishing furniture	cleaning windows	walking 6.5km/hr ( <i>sustained brisk walk, discomfort talking at the same time</i> )
hoeing ( <i>soft soil</i> )	pushing light power mower over flat	
showering	suburban lawn at slow, steady pace	
cleaning car ( <i>excludes vigorous polishing</i> )		

5—6 METs Heavy exercise: manual labour or vigorous sports

Shovelling dirt ( <i>12 throws/min.</i> )	digging in garden	walking slowly but steadily up stairs
tennis doubles ( <i>social non-competitive</i> )	scrubbing floors	pushing a full wheelbarrow (20kg)

6—7 METs

loading truck with bricks	pace walking	carrying load upstairs (10kg)
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7—8 METs Very heavy exercise

Jogging ( <i>8km/hr</i> )	sawing hardwood with hand tools	using pick & shovel to dig trenches
tennis ( <i>singles, non-competitive</i> )	swimming laps ( <i>non-competitive</i> )	

8—9 METs

Running ( <i>9km/hr</i> )	chopping hardwood	
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**Schedule 1B** Tables for the assessment of work-related impairment for disability support pension

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**Metabolic Cost of Activities**

10 METs

Running quickly ( <i>10km/hr</i> )	cycling quickly ( <i>25km/hr</i> )	carrying loads ( <i>10kg</i> ) up a gradient
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**TABLE 2. LOSS OF RESPIRATORY FUNCTION:  
PHYSIOLOGICAL MEASUREMENTS**

Respiratory function is measured by reference to exercise tolerance in the majority of cases and so Table 1 is used. Spirometry can be used where the medical officer feels it is more appropriate for example, where a history of exercise tolerance is difficult to obtain and assess or the history of exercise tolerance is inconsistent with clinical findings on examination. A rating is then obtained using Table 2.

Predictive nomograms for the forced expiratory volume over one second (FEV<sub>1</sub>) and the forced vital capacity (FVC) are at Tables 2.2 and 2.3.

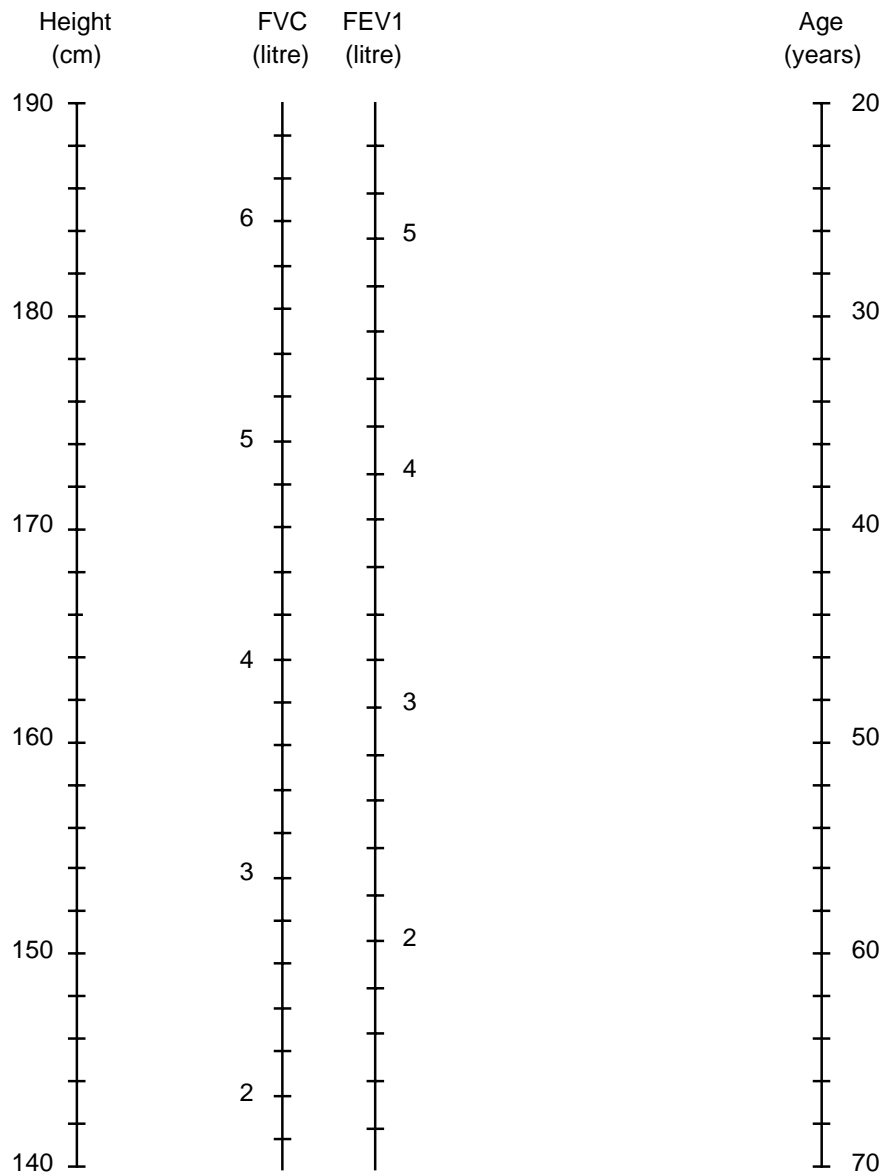
Measurements of Forced Expiratory Volume in one second and Forced Vital Capacity should be performed with a vitalograph or equivalent instrument. Ideally, three readings should be taken and the best of these used to calculate a rating. Calculate the ratio of FEV<sub>1</sub> and FVC against the predicted figures as a percent. Testing pre- and post-bronchodilatation is unnecessary as the aim of assessment under this Table is to assess people in their "normal" state. Furthermore, this Table is only to be used for people with irreversible lung disease. The FEV<sub>1</sub> is usually selectively reduced in Chronic Airflow Limitation and the FVC in Restrictive Lung Disorders. The FEV<sub>1</sub> should be used in preference to the FVC where there is a discrepancy between the two in Chronic Airflow Limitation.

**Assignment of a rating**

<b>Rating</b>	<b>% Predicted FEV<sub>1</sub> or FVC</b>
NIL	80+
TEN	75-79
FIFTEEN	70-74
TWENTY	65-69
TWENTY-FIVE	60-64
THIRTY	50-59
FORTY	49 or less

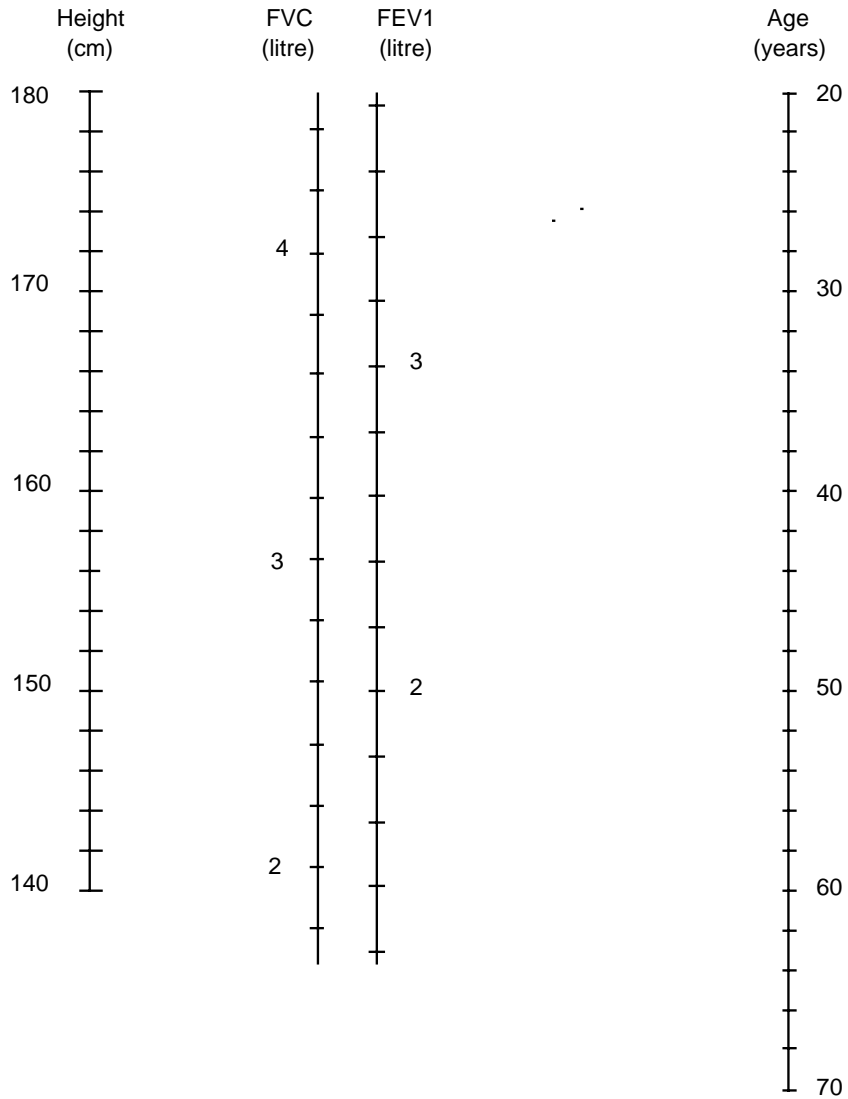
**TABLE 2.2 Prediction nomogram—males**

**NOTES:** From Kamburoff, Petia L., and Woitowitz, H.J. & R.H. (1972)



**TABLE 2.3 Prediction nomogram—females**

NOTES: From Kamburoff, Petia L., and Weitowitz, H.J. & R.H. (1972)



**TABLE 3. UPPER LIMB FUNCTION**

All upper limb problems are assessed under the upper limb Table (Table 3). Each arm is assessed separately. Determination of upper limb impairments must be based on a demonstrable loss of function.

<b>Rating</b>	<b>Criteria</b>
NIL	Can use <b>dominant</b> limb effectively and/or  Demonstrable evidence of loss of strength, mobility, coordination, dexterity and/or sensation of upper limb which causes mild interference with hand function or manual handling.
FIVE	Demonstrable evidence of loss of strength, mobility, coordination, dexterity and/or sensation of <b>non-dominant</b> upper limb which causes moderate interference with hand function or manual handling.
TEN	Demonstrable evidence of loss of strength, mobility, coordination, dexterity and/or sensation of <b>dominant</b> upper limb which causes moderate interference with hand function or manual handling.
FIFTEEN	Demonstrable evidence of major loss of strength, mobility, coordination, dexterity and/or sensation of <b>non-dominant</b> upper limb which causes significant interference with hand function or manual handling.
TWENTY	Demonstrable evidence of major loss of strength, mobility, coordination, dexterity and/or sensation of <b>dominant</b> upper limb which causes significant interference with hand function or manual handling <b>or</b>  Unable to use <b>non-dominant</b> upper limb at all.
THIRTY	Unable to use <b>dominant</b> upper limb at all.

**TABLE 4. FUNCTION OF THE LOWER LIMBS**

Table 4 is used to assess lower limb not spinal function (see Table 5). Assess both limbs together. Determination of lower limb impairments must be based on a demonstrable loss of functions.

<b>Rating</b>	<b>Criteria</b>
NIL	Walks without difficulty on a variety of different terrains and at varying speeds for distances of more than 500m.
TEN	Demonstrable loss of strength, mobility, stability, balance, coordination and/or sensation such as to cause <b>moderate</b> interference with walking and one or more of the following: climbing, squatting, sitting or kneeling <b>or</b>  Pain or claudication restricts walking to 250-500m or less, at a slow to moderate pace (4km/h). Can walk further after resting.
TWENTY	Demonstrable loss of strength, mobility, stability, balance, coordination and/or sensation such as to cause <b>major</b> interference with walking and one or more of the following: climbing, squatting, sitting or kneeling <b>or</b>  Pain or claudication restricts walking (4km/h) to 50-250m or less at a time. Can walk further after resting <b>or</b>  Unable to walk or stand but independently mobile using a self-propelled wheelchair.
THIRTY	Pain or claudication restricts walking (4km/h) to 50m or less at a time. Can walk further after resting or restricted to walking in and around home and: <ul style="list-style-type: none"> <li>• requires quad stick, crutches or similar walking aid, or</li> <li>• is unable to transfer without assistance.</li> </ul>
FORTY	Unable to walk or stand and mobile only in a motorised wheelchair or wheelchair with an attendant.

**TABLE 5. SPINAL FUNCTION**

Determination of spinal impairments must be based on a demonstrable loss of function.

**TABLE 5.1 Cervical spine**

<b>Rating</b>	<b>Criteria</b>
NIL	Normal or nearly normal range of movement.
FIVE	Loss of quarter of normal range of movement.
TEN	Loss of half of normal range of movement and frequent/constant neck pain <b>or</b> loss of three quarters of normal range of movement with infrequent neck pain.
TWENTY	Loss of three-quarters of normal range of movement and constant neck pain.
THIRTY	Loss of almost all movement, or complete ankylosis in position of function.
FORTY	Ankylosis in an unfavourable position, or unstable joint.

**TABLE 5.2 Thoraco—lumbar-sacral spine**

As spinal mobility is a composite movement, this Table measures overall mobility of the trunk including hip movement and is not intended to measure mobility of individual spinal segments.

<b>Rating</b>	<b>Criteria</b>
NIL	Normal or nearly normal range of movement.
FIVE	Loss of one-quarter of normal range of movement.
TEN	Loss of one-quarter of normal range of movement <b>as well as</b> back pain or referred pain: <ul style="list-style-type: none"><li>• with many physical activities and</li><li>• with standing for about 30 minutes and</li><li>• with sitting or driving for about 60 minutes.</li></ul> <p style="text-align: center;"><b><u>or</u></b></p>

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	Loss of half of normal range of movement.
TWENTY	Loss of half of normal range of movement as well as back pain or referred pain: <ul style="list-style-type: none"><li>• with most physical activities and</li><li>• with standing for about 15 minutes and</li><li>• with sitting or driving for about 30 minutes.</li></ul> <p style="text-align: center;"><b><u>or</u></b></p>
	Loss of three-quarters of normal range of movement.
FORTY	Ankylosis in an unfavourable position, or unstable joint.

**TABLE 6. PSYCHIATRIC IMPAIRMENT**

It is important to record a detailed psychiatric history, a mental state examination, and to distinguish between temporary and permanent psychiatric disorders. People with established psychiatric disorders (eg. Bipolar Disorder) may be highly variable in their clinical presentation and this factor must be taken into account in the assessment. The assessment of psychiatric impairment may benefit from investigating; reports from mental health case managers, compliance with and the effects of medication, support systems that people have in place, the degree of insight present and the presence of psychotic illness. Where a person has a short term problem, for example an adjustment disorder with depression following an illness or marital breakdown, initially this should usually be considered to be of a temporary nature. Table 6 is used for permanent psychiatric disorders only. If there is insufficient clinical information available, a current or recent specialist report should be obtained.

**Rating**

**Criteria**

NIL

Mild but regular symptoms which tend to cause subjective distress. On most occasions able to distract themselves from this distress. Minimal interference with function in everyday situations. Exacerbation of symptoms may cause occasional days off work. (eg. There may be some loss of interest in activities previously enjoyed. There may be occasional friction with family, colleagues or friends) Medical therapy or some supportive treatment from treating doctor may be required.

TEN

Moderate and regular symptoms and generally functioning with some difficulty. (eg. noticeable reduction in social contacts or recreational activities, or the beginnings of some interference with interpersonal or workplace relationships). May have received psychiatric treatment which has stabilised the condition. Minor effects on work attendance and/or ability to work but the impairment would not prevent full-time work. (eg. short periods of absence from work).



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TWENTY	Psychiatric illness or disorder with either serious symptomatology OR impairment in functioning that requires treatment by a psychiatrist (eg. frequent suicidal ideation, severe obsessional rituals, frequent severe anxiety attacks, serious anti-social behaviour, diagnosed psychotic illness with continuing symptoms). There is significant interference with interpersonal or workplace relationships with serious disruption of work attendance or ability to work.
THIRTY	Serious psychiatric illness with major impairments in several areas, such as work, interpersonal relations, judgement, thinking, or mood (eg. depressed person avoids friends, neglects family, unable to do housework), OR some impairment in reality testing or communication (eg. speech is at times obscure, illogical or irrelevant).
FORTY	Major chronic psychiatric illness which results in an inability to function in almost all areas, OR behaviour is considerably influenced by either delusions or hallucinations, OR serious impairment in communication (eg. sometimes incoherent or unresponsive) or judgement (eg. acts grossly inappropriately).

**TABLE 7. ALCOHOL AND DRUG DEPENDENCE**

Alcohol and drug dependence is assessed using Table 7. A rating other than **NIL** on this Table should only be assigned where the person's medical and other reports, history and presentation consistently indicate chronic entrenched drug and alcohol dependence. It should also be causing a functional impairment; the use of drugs or alcohol does not in itself constitute or necessarily indicate permanent impairment. Any associated neurological functions or end organ damage should also be assessed on the appropriate tables in addition to Table 7. The ratings are then added together to obtain a total work-related impairment rating.

When applying this Table, consideration should be given to the known biological and behavioural effects of particular substances.

<b>Rating</b>	<b>Criteria</b>
NIL	A pattern of alcohol or drug use with no or only minor effects on daily functioning or work capacity.
FIVE	A pattern of alcohol or drug use sufficient to cause intermittent or temporary absence from work.
TWENTY	Dependence on alcohol or other drugs, well established over time, which is sufficient to cause prolonged absences from work. Reversible end organ damage may be present.
THIRTY	Dependence on alcohol or other drugs, well entrenched over many years, with minimal residual work capacity. Irreversible end organ damage may be present.
FORTY	Pattern of heavy alcohol or other drug use with severe functional disability and irreversible end organ damage.

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**TABLE 8. NEUROLOGICAL FUNCTION: MEMORY, PROBLEM SOLVING, DECISION MAKING ABILITIES & COMPREHENSION**

Table 8 is used to rate impairment of higher neurological functions of memory, problem solving, decision making ability and comprehension. Loss of function within this group is rated only once using this Table. If there are additional functional losses, these are also assessed using other relevant Tables.

People with acquired brain injury may have associated problems with behaviour and/or insight. These impairments may be rated using both Table 8 and Table 6.

If there is insufficient clinical information available on cognitive function, a current or recent specialist report should be obtained (eg. neurologist, specialist physician or neuropsychologist). The report should address functions of comprehension, memory, ability to concentrate, problem solving, loss of motivation, fatigue or any associated behavioural abnormalities or disorders.

**Rating**

**Criteria**

NIL

Comprehension, reasoning and memory are comparable with peers or only minor difficulties.

TEN

Can understand movies, radio programs or group discussions, but with some difficulty. Comprehension is good in most situations, but understanding is difficult in large groups, or when tired and upset. Has difficulty coping with rapid changes of topic **or**

Mild impairment of problem solving and ability to concentrate: appropriate use is made of accumulated knowledge, and reasonable judgement is shown in routine daily activities most of the time. Difficulties are apparent in new circumstances **or**

Mild impairment of memory. Can learn, although at a slower rate than previously. Impairment has little impact on everyday activity because of compensation through reliance on written notes, schedules, checklists and colleagues.

**Schedule 1B** Tables for the assessment of work-related impairment for disability support pension

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TWENTY	<p>Can understand speech face-to-face, but confusion or fatigue occurs rapidly in any group. Is unable to cope with rapid change in topic, or with complex topics and is unable to understand a series of work instructions from a supervisor <b>or</b></p> <p>Moderate impairment of memory: has frequent difficulty in recalling details of recent experiences; frequently misplaces objects; fails to follow through with intentions or obligations; tends to get lost more easily in unfamiliar areas.</p> <p>Compensation through use of aids, eg, lists or diaries is normally adequate. If restricted to familiar schedules, activities, procedures and areas, is largely independent <b>or</b></p> <p>Moderate impairment of problem-solving ability and ability to concentrate: relies on accumulated knowledge. Suffers significant disadvantage in circumstances requiring complex decision-making or non-routine activities, ie, when past decision-making is not directly relevant. Has reduced initiative/spontaneity, reduced ability to concentrate and/or reduced capacity for abstract thinking <b>or</b></p> <p>Significant perceptual problems (visual, space or time) making learning and complying with work tasks very difficult.</p>
THIRTY	<p>Can understand only simple sentences, and follow simple sentences from context and gesture, although frequent repetition is needed.</p>
FORTY	<p>Can understand only single words. Shows some understanding of slowly-spoken simple sentences from context and gesture, although frequent repetition is needed <b>or</b></p> <p>Severe loss of problem solving ability. Is partially able to compensate, but unable to function with complete independence.</p>

**TABLE 9. COMMUNICATION FUNCTION—RECEPTIVE AND EXPRESSIVE LANGUAGE COMPETENCY**

This Table measures communication and language competency and addresses both receptive (processing) and expressive language impairment. Hearing loss with impaired language processing or expression should be scored using this Table and Table 12. Hearing loss with normal language competency should only be scored on Table 12. Where language impairment is an effect of cognitive loss, a single rating should be assigned using Table 8 to reflect the combined loss of cognitive and language function. Where language impairment is separate or additional to a cognitive impairment, these losses may be rated using Table 8 and Table 9. The following factors should be considered in determining an impairment rating:

- The ability to independently and successfully use appropriate assistive devices, aids or strategies to reduce the impact of the impairment;
- The ability to make use of environmental cues and resources (including sign interpreters in the case of deaf people) to reduce the impact of the impairment;
- Intactness of other channels of communication:  
reading, writing, non-verbal language;
- The degree of effort required by the communication partner(s) in any particular communication setting;
- Appropriateness and degree of success of communicative interactions.

If there is insufficient clinical information available on communication skills, a current or recent specialist report should be obtained (eg. speech pathologist, neurologist or neuropsychologist). The report should comment on functional communication status, including the capacity to utilise compensatory strategies/aids to reduce the impact of the impairment.

**Schedule 1B** Tables for the assessment of work-related impairment for disability support pension

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<b>Rating</b>	<b>Criteria</b>
NIL	Satisfactory or only minor difficulties with communication
FIFTEEN	Difficulty with unfamiliar, lengthy or complex verbal situations and unable to adapt or manage interruption but competent communication in favourable settings. Could work in a wide range of occupations but high public contact and high communication content jobs may be too demanding.
TWENTY	Communication is effortful and limited. A communication partner is required to assist in interpreting the information. Unable to cope with rapid change in topic or complex/abstract information but can understand simple sentences & follow information from context and gestures. Could work in open employment in a limited range of occupations but could not manage jobs which require high communication demands or public contact.
THIRTY	Communication is very limited. May be able to use context to convey message and may be able to comprehend material if it is repeated, rephrased or represented in another format. May convey information via a YES/NO response. Unlikely to cope with open employment unless work tasks had minimal communication requirements.
FORTY	There is little or no functional understanding of verbal language and communication relies entirely on someone else to interpret meaning. May have an augmentative/communication device or board but only able to use it effectively in familiar settings. Unlikely to cope with any open employment.

**TABLE 10. INTELLECTUAL DISABILITY**

This Table is only to be used for intellectual disability. Three key criteria are assessed, IQ using the Weschler Adult Intelligence Scale (Revised WAIS-R) and two areas of social functioning: adaptive behaviour and capacity for independent living. The claimant is given a score for each and the **three scores are then added.** The final figure is converted to a work-related impairment rating using the table below. A score can only be assigned for the two social functioning criteria if a score has been assigned for a low IQ. Where it is clear that the person is moderately to severely intellectually impaired, formal psychometric testing may not be necessary but in borderline and mild cases where no formal testing has been performed, this should be arranged.

<b><u>INTELLIGENCE (IQ)</u></b>	<b><u>SCORE</u></b>	<b><u>ADAPTIVE BEHAVIOUR</u></b>	<b><u>SCORE</u></b>
Normal	<b>0</b>	No or only mild behavioural problems	<b>0</b>
70 - 79	<b>3</b>	Moderate to severe behavioural problems	<b>3</b>
50 - 69	<b>5</b>		
30 - 49	<b>6</b>		
Below 30	<b>8</b>		

**Schedule 1B** Tables for the assessment of work-related impairment for disability support pension

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<b><u>CAPACITY FOR INDEPENDENT LIVING</u></b>	<b><u>SCORE</u></b>
Self-sufficient	<b>0</b>
Needs <b>supervision</b> of daily activities and routine financial transactions eg. needs to be reminded to perform routine tasks/personal care	<b>3</b>
Needs <b>regular</b> help with daily activities and routine financial transactions	<b>4</b>
Needs <b>major</b> help with daily activities and routine financial transactions	<b>5</b>
Totally dependent	<b>6</b>

(Conversion Table follows)

**Table for conversion to work-related impairment rating**

<b><u>SCORE</u></b>	<b><u>RATING</u></b>
3	TEN
5	TWENTY
6	TWENTY FIVE
7	THIRTY
8	THIRTY FIVE
9 or above	FORTY



**TABLE 11.1 GASTROINTESTINAL: STOMACH, DUODENUM, LIVER AND BILIARY TRACT**

<b>Rating</b>	<b>Criteria</b>
NIL	Peptic ulcer/oesophagitis/liver disease: mild symptoms despite optimal treatment.
TEN	Nausea and vomiting: moderate symptoms despite optimal treatment Peptic ulcer/oesophagitis: continuing frequent symptoms despite optimal treatment Past gastric surgery with moderate dyspepsia and dumping syndrome Established chronic liver disease. Symptoms (eg fatigue, nausea) may cause minor loss of efficiency in daily activities but rarely prevent completion of any activity.
TWENTY	Constant dysphagia requiring regular dilatation Vomiting: severe, not controlled despite optimal medication, and causing significant weight loss Peptic ulcer refractory to all treatment including surgery or with complications eg bleeding or outlet obstruction Established chronic liver disease. Symptoms (eg, more persistent fatigue, nausea, abdominal pain) may prevent or lead to avoidance of some daily tasks and simple tasks will usually aggravate symptoms of fatigue. Most daily activities can be completed but only with some difficulty.
THIRTY	Diet limited to liquid or to pureed food or long term total parenteral nutrition Gastrostomy Established chronic liver disease. Symptoms (eg, ascites, bleeding disorders, hepatic encephalopathy, more severe fatigue, nausea, vomiting) may cause substantial difficulty with most daily tasks.

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**TABLE 11.2 GASTROINTESTINAL: PANCREAS, SMALL AND LARGE BOWEL, RECTUM AND ANUS**

<b>Rating</b>	<b>Criteria</b>
NIL	<p>Anal disorder: infrequent and minor symptoms, eg, haemorrhoids, anal fissures, controlled by medication</p> <p>Bowel disorder, eg, irritable bowel, diverticulosis: infrequent and minor symptoms such as constipation, or bowel disorder which respond to dietary treatment alone.</p>
TEN	<p>Bowel disorder: frequent moderate symptoms despite optimal treatment</p> <p>Occasional faecal soiling despite optimal treatment</p> <p>Anal disorder: marked symptoms despite regular treatment</p> <p>Colostomy, ileostomy - well controlled</p> <p>Established chronic pancreatic disease with moderate symptoms (pain/steatorrhoea)</p> <p>Large abdominal hernia not easily reduced and resulting in persistent moderate symptoms.</p>
TWENTY	<p>Faecal soiling necessitating frequent changes of underwear and an incontinence pad despite optimal treatment</p> <p>Bowel disorder: marked symptoms, such as regular diarrhoea and frequent abdominal pain, only partially controlled by optimal treatment</p> <p>Colostomy, ileostomy - poorly controlled</p> <p>Large abdominal hernia and/or repeated unsatisfactory hernia repairs resulting in frequent and persistent severe symptoms</p> <p>Established chronic pancreatic disease with severe symptoms (pain/steatorrhoea).</p>

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THIRTY	Bowel disorder: diarrhoea and abdominal pain on most days, with poor response to treatment and considerable interference with daily routine  Jejunostomy  Established chronic pancreatic disease with severe symptoms (pain/steatorrhoea) and with intractable complications.
FORTY	Complete faecal incontinence.

**TABLE 12. HEARING FUNCTION**

Testing to be carried out without a hearing aid.

**Assignment of work-related impairment rating**

<b>Percentage Loss of Binaural Hearing</b>	<b>Rating</b>
0 - 24.9	NIL
25 - 34.9	FIVE
35 - 44.9	TEN
45 - 54.9	FIFTEEN
55 - 64.9	TWENTY
65 - 74.9	TWENTY FIVE
75 - 84.9	THIRTY
85 - 94.9	THIRTY FIVE
95 - 100	FORTY

TABLE 12.2 500 Hz  
VALUES OF PERCENTAGE LOSS OF HEARING CORRESPONDING TO GIVEN  
HEARING THRESHOLD LEVELS IN THE BETTER AND WORSE EARS AT 500Hz

HTL - WORSE EAR		HTL - BETTER EAR																
		≤15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	≥95
≤15	0.0																	
20	0.4	0.6																
25	0.6	1.0	1.4															
30	1.0	1.4	2.0	2.8														
35	1.3	1.8	2.5	3.4	4.5													
40	1.7	2.2	3.0	3.9	5.1	6.4												
45	2.0	2.6	3.4	4.3	5.5	6.8	8.1											
50	2.3	2.9	3.7	4.7	5.8	7.1	8.4	9.7										
55	2.5	3.2	4.0	5.0	6.1	7.3	8.6	9.9	11.2									
60	2.7	3.4	4.2	5.2	6.3	7.5	8.8	10.0	11.3	12.6								
65	2.8	3.5	4.4	5.4	6.5	7.7	8.9	10.2	11.5	12.7	14.0							
70	2.9	3.7	4.5	5.5	6.6	7.8	9.1	10.3	11.6	12.9	14.2	15.5						
75	3.0	3.8	4.7	5.7	6.8	8.0	9.2	10.5	11.8	13.1	14.5	15.7	16.9					
80	3.1	3.9	4.8	5.8	6.9	8.1	9.3	10.6	12.0	13.3	14.7	16.0	17.2	18.2				
85	3.2	4.0	4.9	5.9	7.0	8.2	9.4	10.7	12.1	13.5	14.9	16.2	17.4	18.4	19.1			
90	3.4	4.1	5.0	6.0	7.1	8.1	9.5	10.8	12.2	13.6	15.0	16.3	17.6	18.5	19.2	19.7		
≥95	3.4	4.2	5.1	6.1	7.1	8.1	9.5	10.8	12.2	13.6	15.0	16.4	17.6	18.6	19.3	19.7	20.0	

**Schedule 1B** Tables for the assessment of work-related impairment for disability support pension

TABLE 12.3 1000 Hz  
VALUES OF PERCENTAGE LOSS OF HEARING CORRESPONDING TO GIVEN  
HEARING THRESHOLD LEVELS IN THE BETTER AND WORSE EARS AT 1000Hz

HTL - WORSE EAR	HTL - BETTER EAR																
	≤15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	≥95
≤15	0.0																
20	0.5	0.8															
25	0.8	1.2	1.8														
30	1.2	1.7	2.5	3.5													
35	1.7	2.3	3.1	4.3	5.7												
40	2.1	2.8	3.7	4.9	6.3	8.0											
45	2.5	3.3	4.2	5.4	6.9	8.5	10.2										
50	2.8	3.6	4.7	5.9	7.3	8.8	10.5	12.1									
55	3.1	3.9	5.0	6.2	7.6	9.1	10.7	12.4	14.0								
60	3.3	4.2	5.3	6.5	7.9	9.4	11.0	12.6	14.2	15.7							
65	3.5	4.4	5.5	6.7	8.1	9.6	11.2	12.8	14.4	15.9	17.5						
70	3.7	4.6	5.7	6.9	8.3	9.8	11.3	12.9	14.6	16.2	17.8	19.4					
75	3.8	4.7	5.8	7.1	8.5	10.0	11.5	13.1	14.8	16.4	18.1	19.7	21.1				
80	3.9	4.9	6.0	7.3	8.6	10.1	11.7	13.3	15.0	16.7	18.4	20.0	21.5	22.7			
85	4.1	5.0	6.2	7.4	8.8	10.3	11.8	13.4	15.1	16.9	18.6	20.3	21.7	23.0	23.9		
90	4.2	5.2	6.3	7.5	8.9	10.3	11.9	13.5	15.2	17.0	18.7	20.4	21.9	23.2	24.1	24.6	
≥95	4.3	5.3	6.4	7.6	8.9	10.3	11.9	13.5	15.2	17.0	18.7	20.5	22.0	23.3	24.2	24.7	25.0

TABLE 12.4 1500 Hz  
 VALUES OF PERCENTAGE LOSS OF HEARING CORRESPONDING TO GIVEN  
 HEARING THRESHOLD LEVELS IN THE BETTER AND WORSE EARS AT 1500Hz

HTL - WORSE EAR		25	30	35	40	45	50	55	60	65	70	75	80	85	90	≥95
≤15	0.0															
20	0.4															
25	0.6	1.4														
30	1.0	2.0	2.8													
35	1.3	2.5	3.4	4.5												
40	1.7	3.0	3.9	5.1	6.4											
45	2.0	3.4	4.3	5.5	6.8	8.1										
50	2.3	3.7	4.7	5.8	7.1	8.4	9.7									
55	2.5	4.0	5.0	6.1	7.3	8.6	9.9	11.2								
60	2.7	4.2	5.2	6.3	7.5	8.8	10.0	11.3	12.6							
65	2.8	4.4	5.4	6.5	7.7	8.9	10.2	11.5	12.7	14.0						
70	2.9	4.5	5.5	6.6	7.8	9.1	10.3	11.6	12.9	14.2	15.5					
75	3.0	4.7	5.7	6.8	8.0	9.2	10.5	11.8	13.1	14.5	15.7	16.9				
80	3.1	4.8	5.8	6.9	8.1	9.3	10.6	12.0	13.3	14.7	16.0	17.2	18.2			
85	3.2	4.9	5.9	7.0	8.2	9.4	10.7	12.1	13.5	14.9	16.2	17.4	18.4	19.1		
90	3.4	5.0	6.0	7.1	8.3	9.5	10.8	12.2	13.6	15.0	16.3	17.6	18.5	19.2	19.7	
≥95	3.4	5.1	6.1	7.1	8.3	9.5	10.8	12.2	13.6	15.0	16.4	17.6	18.6	19.3	19.7	20.0

**Schedule 1B** Tables for the assessment of work-related impairment for disability support pension

TABLE 12.5 2000 Hz  
VALUES OF PERCENTAGE LOSS OF HEARING CORRESPONDING TO GIVEN  
HEARING THRESHOLD LEVELS IN THE BETTER AND WORSE EARS AT 2000Hz

HTL - WORSE EAR		HTL - BETTER EAR																	
		≤15	20	25	30	35	40	45	50	55	60	65	70	75	80	85	90	≥95	
≤15	0.0																		
20	0.3																		
25	0.5		0.7	1.1															
30	0.7		1.0	1.5	2.1														
35	1.0		1.4	1.9	2.5	3.4													
40	1.3		1.7	2.2	2.9	3.8	4.8												
45	1.5		1.9	2.5	3.3	4.1	5.1	6.1											
50	1.7		2.2	2.8	3.5	4.4	5.3	6.3	7.3										
55	1.9		2.4	3.0	3.7	4.6	5.5	6.4	7.4	8.4									
60	2.0		2.5	3.1	3.9	4.7	5.6	6.6	7.5	8.5	9.4								
65	2.1		2.6	3.3	4.0	4.9	5.7	6.7	7.6	8.6	9.6	10.5							
70	2.2		2.7	3.4	4.1	5.0	5.9	6.8	7.8	8.7	9.7	10.7	11.6						
75	2.3		2.8	3.5	4.3	5.1	6.0	6.9	7.9	8.9	9.9	10.8	11.8	12.7					
80	2.4		2.9	3.6	4.4	5.2	6.1	7.0	8.0	9.0	10.0	11.0	12.0	12.9	13.6				
85	2.4		3.0	3.7	4.4	5.3	6.1	7.1	8.1	9.1	10.1	11.1	12.1	13.0	13.8	14.3			
90	2.5		3.1	3.8	4.5	5.3	6.2	7.1	8.1	9.1	10.2	11.2	12.2	13.2	13.9	14.4	14.8		



Tables for the assessment of work-related impairment for disability support pension **Schedule 1B**

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≥95	2.6	3.2	3.8	4.6	5.4	6.2	7.1	8.1	9.1	10.2	11.3	12.3	13.2	14.0	14.5	14.8	15.0
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**Schedule 1B** Tables for the assessment of work-related impairment for disability support pension

TABLE 12.6 3000 Hz  
VALUES OF PERCENTAGE LOSS OF HEARING CORRESPONDING TO GIVEN  
HEARING THRESHOLD LEVELS IN THE BETTER AND WORSE EARS AT 3000Hz

	25	30	35	40	45	50	55	60	65	70	75	80	85	90	≥95
HTL - BETTER EAR															
HTL - WORSE EAR															
≤15	0.0														
20	0.2														
25	0.3	0.7													
30	0.5	1.0	1.4												
35	0.7	1.2	1.7	2.3											
40	0.8	1.1	1.5	2.0	2.5										
45	1.0	1.3	1.7	2.2	2.7	3.4									
50	1.1	1.4	1.9	2.3	2.9	3.5	4.2								
55	1.2	1.6	2.0	2.5	3.0	3.6	4.3	4.9	5.6						
60	1.3	1.7	2.1	2.6	3.1	3.7	4.4	5.0	5.6	6.3					
65	1.4	1.8	2.2	2.7	3.2	3.8	4.4	5.1	5.7	6.4	7.0				
70	1.5	1.8	2.3	2.8	3.3	3.9	4.5	5.2	5.8	6.5	7.1	7.7			
75	1.5	1.9	2.3	2.8	3.4	4.0	4.6	5.2	5.9	6.6	7.2	7.8	8.4		
80	1.6	2.0	2.4	2.9	3.4	4.0	4.7	5.3	6.0	6.6	7.3	8.0	8.6	9.1	
85	1.6	2.0	2.5	3.0	3.5	4.1	4.7	5.4	6.0	6.7	7.4	8.1	8.7	9.2	9.5
90	1.7	2.1	2.5	3.0	3.5	4.1	4.7	5.4	6.1	6.8	7.5	8.2	8.8	9.2	9.6
≥95	1.7	2.1	2.6	3.0	3.6	4.1	4.7	5.4	6.1	6.8	7.5	8.2	8.8	9.3	9.6
															10.0

TABLE 12.7 4000 Hz  
VALUES OF PERCENTAGE LOSS OF HEARING CORRESPONDING TO GIVEN  
HEARING THRESHOLD LEVELS IN THE BETTER AND WORSE EARS AT 4000Hz

	25	30	35	40	45	50	55	60	65	70	75	80	85	90	≥95
HTL - BETTER EAR															
HTL - WORSE EAR															
≤20	0.0														
25	0.2														
30	0.3	0.8													
35	0.5	1.0	1.5												
40	0.6	1.3	1.8	2.5											
45	0.8	1.1	1.5	2.1	3.5										
50	0.9	1.3	1.7	2.3	3.6	4.4									
55	1.0	1.4	1.9	2.4	3.8	4.5	5.2								
60	1.2	1.5	2.0	2.6	3.9	4.6	5.3	6.0							
65	1.2	1.6	2.1	2.7	3.9	4.6	5.3	6.0	6.7						
70	1.3	1.7	2.2	2.7	4.0	4.7	5.4	6.1	6.8	7.5					
75	1.4	1.8	2.3	2.8	4.1	4.8	5.5	6.2	6.9	7.6	8.2				
80	1.4	1.9	2.3	2.9	4.2	4.9	5.6	6.3	7.0	7.7	8.4	8.9			
85	1.5	1.9	2.4	3.0	4.2	4.9	5.7	6.4	7.1	7.8	8.5	9.0	9.5		
90	1.6	2.0	2.5	3.0	4.3	5.0	5.7	6.5	7.2	7.9	8.6	9.1	9.5	9.8	
≥95	1.6	2.0	2.5	3.1	4.3	5.0	5.7	6.5	7.2	8.0	8.7	9.2	9.6	9.8	10.0

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**TABLE 13. VISUAL ACUITY IN THE BETTER EYE**

Work-related impairment in relation to a loss of visual acuity is assessed by measuring visual acuity. This refers to best corrected vision in the better eye with spectacles or contact lenses (if applicable). Referral to an optometrist or ophthalmologist may be required if there is doubt as to whether best corrected vision has been achieved or with the accuracy of the Snellen's Chart assessment. A person meets the criteria for permanent blindness under section 95 of the Social Security Act if the corrected visual acuity is less than 6/60 on the Snellen Scale in both eyes or there is a combination of visual defects resulting in the same degree of permanent visual loss.

<b>Visual Acuity</b>		<b>Rating</b>		
		<u>Cataract operation</u>		
		(unilateral and bilateral aphakia not to receive a different rating)		
		Implant	Contact lenses	Glasses
6/6	0	0	0	10
6/9	0	0	10	20
6/12	5	10	20	40
6/18	10	20	40	40
6/24 or worse	20	40	40	40

**TABLE 14. MISCELLANEOUS EYE CONDITIONS**

<b>Visual Disturbance</b>	<b>Rating</b>
Squint (Heterophoria): Latent	0
Squint (Heterotropia): Without diplopia	0
Acquired Heterotropia (squint) with diplopia:	
one quadrant of upward gaze	5
all directions of upward gaze	10
one quadrant of downward gaze	10
one direction of sideways gaze	10
both directions of sideways gaze	10
all directions of gaze	20
all directions of downward gaze	20
all range of near vision	20
Constant irritation of eyes, photophobia, epiphora, ectropion or entropion	0
Gaze defects (vertical and/or horizontal)	10
Glaucoma without visual loss	0
Longstanding Blepharospasm	10
Loss of stereoscopic vision in absence of squint	
Permanent (eg. blind in one eye)	5
Intermittent (eg. ptosis or tarsorrhaphy)	10
Nystagmus without diplopia	Rate as for visual acuity
Retinal Dystrophy with night blindness	Rate as for visual acuity and visual fields

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**TABLE 15. VISUAL FIELDS**

It is usually necessary to seek ophthalmological advice for an accurate assessment under this Table. A person meets the criteria for permanent blindness under section 95 of the Social Security Act if their field of vision is constricted to ten degrees or less of arc from central fixation in the better eye irrespective of corrected visual acuity or there is a combination of visual defects resulting in the same degree of visual impairment.

<b>Type of Defect</b>	<b>Rating</b>	
	<b>Only one eye affected</b>	<b>Both eyes affected (or there is only one eye and it is affected)</b>
Temporal Hemianopia	10	20
Nasal Hemianopia	10	20
Upper half loss	10	20
Lower half loss	20	20
Upper quadrant loss	0	20
Lower quadrant loss	0	20
Constriction outside 30 degrees of fixation	0	0
Constriction to within 30 degrees of fixation	10	10
Constriction to within 20 degrees of fixation	20	20
Constriction to within 10 degrees of fixation	20	permanent blindness (see above)

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**TABLE 16. LOWER URINARY TRACT**

This Table is to be used for incontinence and other urethral and bladder outlet disorders.

<b>Rating</b>	<b>Criteria</b>
NIL	Minor stress incontinence. Bladder outlet or urethral obstruction with mild symptoms.
TEN	Loss of voluntary control of bladder, but satisfactory emptying achieved by triggering of reflex activity, suprapubic pressure or Valsalva manoeuvre. No incontinence aid needed  <b><u>or</u></b> Ileal or Sigmoid conduit  <b><u>or</u></b> Chronic Urinary Obstruction needing regular catheterisation.
TWENTY	Loss of voluntary control of bladder with dribbling incontinence needing frequent change of incontinence pads, or a collection device, eg, urodome catheter  <b><u>or</u></b> Ureterosigmoidostomy.

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**TABLE 17. RENAL FUNCTION**

As renal disease has systemic effects, assessment of renal impairment as it impacts on work capacity is based upon the loss of function resulting from these systemic effects. For example, for persistent generalised symptoms such as fatigue use Table 20, refractory anaemia is assessed using Table 20, persistent gastrointestinal symptoms (eg. vomiting) despite optimal treatment are assessed using Table 11 and persistent Central Nervous System symptoms using Table 8. Renal transplants are assessed using Table 20.

**Dialysis is rated as follows:**

FIFTEEN	All types of dialysis (except outpatient haemodialysis) which are functioning well. Some decreased ability to carry out everyday activities but independence is retained.
TWENTY	Outpatient haemodialysis and all types of dialysis which are functioning poorly. More severe symptoms with a decreased ability to carry out many everyday activities. Most daily activities can be completed with some difficulty. Symptoms may prevent or lead to avoidance of some daily tasks and simple tasks will usually aggravate symptoms of fatigue.
THIRTY	End stage renal disease with very severe symptoms which lead to substantial difficulties with most daily tasks.
FORTY	End stage renal disease leading to major restrictions in many everyday activities. Capacity for self-care is restricted leading to dependence on others.



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**TABLE 18. SKIN DISORDERS**

In the evaluation of work-related impairment resulting from a skin disorder, the actual functional loss is the prime consideration. However, where there is extensive cosmetic or cutaneous involvement, this should also be considered.

<b>Rating</b>	<b>Criteria</b>
NIL	Signs and symptoms of skin disorder present and with treatment there is NO limitation in the performance of normal daily activities.
TEN	Signs and symptoms of skin disorder present despite optimal treatment and results in some interference with normal daily activities.
TWENTY	Signs and symptoms of skin disorder present despite optimal treatment and results in significant interference with normal daily activities.
FORTY	Very severe symptoms requiring continuous treatment which may include periodic confinement to home or hospital and needs considerable assistance with normal daily activities.

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**TABLE 19. ENDOCRINE DISORDERS**

The effects of endocrine disorders eg. diabetes mellitus on other body systems eg. the vascular and visual systems should be assessed from the appropriate tables and added together with values from this table.

<b>Rating</b>	<b>Criteria</b>
NIL	Thyroid disease, Acromegaly, Cushing's disease, Prolactinoma, Diabetes Mellitus, Diabetes Insipidus, Parathyroid Disease, Paget's disease, Osteoporosis, Addison's Disease adequately controlled with hormone replacement and/or surgery and/or radiotherapy and/or therapeutic agents.
TEN	Thyroid disease, Acromegaly, Cushing's disease, Prolactinoma, Diabetes Insipidus, Parathyroid Disease, Paget's disease or Osteoporosis which is incompletely controlled or treated eg. symptomatic Paget's disease, osteoporosis or other bone disease with pain not completely controlled by continuous therapy.
TWENTY	Diabetes mellitus or Addison's Disease not satisfactorily controlled despite vigorous therapy as indicated by for example frequent hospital admissions, recurrent hypoglycaemic or hypotensive episodes and/or progressive end organ damage.

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**TABLE 20. MISCELLANEOUS - MALIGNANCY, HYPERTENSION, HIV INFECTION, MORBID OBESITY (ie BMI >40), HEART/LIVER/KIDNEY TRANSPLANTS, MISCELLANEOUS EAR/NOSE/THROAT CONDITIONS & CHRONIC FATIGUE OR PAIN**

Table 20 can be used for miscellaneous conditions, for example, malignancy, HIV infection, morbid obesity, transplants, miscellaneous ear/nose/throat conditions, disorders with chronic fatigue (including Chronic Fatigue Syndrome) or pain and hypertension. Where there is a separate loss of function, in addition to the loss which can be rated using the system-specific Tables, Table 20 can be used. Double-counting of a particular loss of function, by the use of more than one Table, must be avoided.

<b>Rating</b>	<b>Criteria</b>
NIL	<p>Controlled hypertension</p> <p>Malignancy in remission with a good to fair prognosis</p> <p>Minor symptoms which are easily tolerated and have no appreciable effect on ability to work.</p>
TEN	<p>Mild to moderate symptoms which are irritating or unpleasant but which rarely prevent completion of any activity. Symptoms may cause loss of efficiency in daily activities but minimal interference performing or persisting with work-related tasks. There is minimal effect/impact on work attendance.</p> <p>Hypertension that is difficult to control despite intensive therapy but without end-organ damage</p> <p>Potentially life-threatening condition which is currently <b>not</b> interfering with daily activities eg. malignancy in remission with a poor prognosis</p> <p>Heart/Liver/Kidney transplants - well controlled (well functioning) with only mild systemic symptoms.</p>

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FIFTEEN	<p>Moderate to severe symptoms which are more distressing but prevent few everyday activities. Self-care is unaffected and independence is retained. Symptoms may have mild to moderate impact on ability to perform or persist with work-related tasks and/or attend work. Full-time work would still be possible.</p> <p>Potentially life-threatening condition which is currently interfering with daily activities but self-care is unaffected.</p>
TWENTY	<p>More severe symptoms with a decreased ability/efficiency to carry out many everyday activities. Most daily activities can be completed with some difficulty. Symptoms may prevent or lead to avoidance of some daily tasks and simple tasks will usually aggravate symptoms of fatigue. Symptoms cause significant interference with ability to perform or persist with work-related tasks. Symptoms may cause prolonged absences from work.</p>
THIRTY	<p>Very severe symptoms which lead to substantial difficulty with most daily tasks. Assistance with elements of self-care may be required. Symptoms cause severe interference with ability to work or attend work (ie. minimal residual work capacity).</p> <p>Heart/Liver/Kidney transplants - poorly controlled (poorly functioning) with fairly severe symptoms which lead to substantial difficulty with most daily tasks</p> <p>Malignant hypertension - severe, uncontrolled</p> <p>Inoperable, symptomatic and life-threatening aneurysm or malignancy. Very poor prognosis with only a very limited lifespan.</p>
FORTY	<p>Major restrictions in many everyday activities. Capacity for self-care is restricted, leading to dependence on others. No residual work capacity.</p>

**TABLE 21. INTERMITTENT CONDITIONS**

Intermittent but continuing disorders that remain asymptomatic between discrete episodes of impairment eg. gout, epilepsy, Meniere's Disease, vertigo & tinnitus (only to be scored in the presence of a diagnosed condition causing these symptoms but if the symptoms are continuous Table 20 should be used) are rated by reference to severity, duration and frequency of attacks:

- **severity** during an attack is defined in the descriptions below;
- **duration** is defined in the descriptions below;
- **frequency** is determined by the number of affected days in a year.

A rating using the above three factors is made by first coding severity and duration into an intermittent grading. The code is then combined with frequency, using Table 21.4, to give the rating.

Some intermittent disorders may be rated using system-specific tables. The system-specific table is then used in preference eg. severe asthma where there is persistent airway limitation.

When episodes vary in severity, duration or frequency, an average for each factor should be estimated. More than one rating may be given for the same disorder. Thus for grand mal epilepsy one rating is given for the ictal phase and a second rating for the post-ictal stage. The two are then added together.

For acute exacerbations of chronic disorders, where the acute relapses are frequent and severe, the Intermittent Tables can be used in addition to the primary score derived for the underlying medical condition eg. frequent attacks of acute bronchitis can be scored using Table 21 in addition to Table 1 or 2 for Chronic Airways Limitation and the scores added together.

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**TABLE 21.1 Intermittent attack - severity**

<b>Level</b>	<b>Criteria</b>
NIL	Minor symptoms which are easily tolerated.
ONE	Mild to moderate symptoms which are irritating or unpleasant but which rarely prevent completion of any activity. Symptoms may cause loss of efficiency in some activities.
TWO	More severe symptoms which are distressing, but prevent few everyday activities. Loss of efficiency is discernible elsewhere. Self-care is unaffected and independence is retained.
THREE	Loss of efficiency is discernible in many everyday activities. Some elements of self-care are restricted but in most respects, independence is retained. Bed-rest is often necessary during an attack.
FOUR	Major restrictions in many everyday activities. Capacity for self-care is increasingly restricted, leading to partial dependence on others.
FIVE	Most everyday activities are prevented. Dependent on others for many kinds of self-care. Able to be maintained at home only with considerable difficulty, or hospital admission is required.
SIX	Total incapacity. Unconscious or delirious. Self-care is impossible.

**TABLE 21.2 Intermittent attack - duration**

<b>Description</b>	<b>Duration</b>
Transient	Lasting up to and including five minutes.
Short	Lasting more than five minutes but less than 30 minutes.
Medium	Lasting from 30 minutes to four hours.
Prolonged	Lasting more than four hours.

**TABLE 21.3 Severity - grading code**

Description	Severity Level						
	0	1	2	3	4	5	6
Transient	A	A	A	B	C	C	F
Short	A	A	C	C	D	E	H
Medium	A	B	C	D	E	H	I
Prolonged	A	C	D	F	G	I	J

A rating is obtained using Table 21.3 and Table 21.4:

- determine the intermittent grading code appropriate to the estimated severity and duration from Table 21.3; and
- make the rating appropriate to the intermittent grading code and frequency from Table 21.4.

**TABLE 21.4 Assignment of a rating**

	Frequency (Affected days/year)					
	2+	5+	10+	20+	40+	100+
<b>Intermittent</b>	<b>Rating</b>					
<b>Grading code</b>						
A	-	-	-	-	-	-
B	-	-	-	-	-	5
C	-	-	-	-	5	10
D	-	-	-	5	10	20
E	-	-	-	5	10	30
F	-	-	5	5	10	30
G	-	-	5	10	20	30
H	-	-	5	10	30	40
I	-	5	10	30	40	40
J	5	10	20	40	40	40

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**TABLE 22. GYNAECOLOGICAL CONDITIONS**

Gynaecological conditions such as pelvic inflammatory disease and endometriosis should be assessed using Table 22. The Medical Officer should only use this Table for significant diagnosed conditions affecting normal daily functioning and which are likely to continue for the foreseeable future. Malignancy should be scored using Table 20. Disability due to mastectomy should only be scored where there is an associated loss of upper limb function and Table 3 should then be used. Post-natal depression may be scored using Table 6 if considered to be adversely affecting function for the next two years.

For males, disorders of the genital system should be assessed under Tables 16 or 17.

<b>Rating</b>	<b>Criteria</b>
NIL	Minor symptoms which are easily tolerated. Minimal effect on daily functioning or work capacity.
TEN	Moderate and frequent symptoms present despite treatment due to a condition which has been properly diagnosed. Some decreased ability to carry out every day activities but independence is retained.
TWENTY	Moderate to severe symptoms frequently present despite optimal treatment due to a condition which has been properly diagnosed. Decreased ability to carry out everyday activities, requiring assistance with elements of self-care.
THIRTY	More severe symptoms frequently present despite optimal treatment due to a condition which has been properly diagnosed. This results in substantial difficulties with most daily tasks.
FORTY	Severe symptoms frequently present despite optimal treatment due to a condition which has been properly diagnosed and needs considerable assistance with many daily activities.



## **Schedule 2—Agreement on Social Security Between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland**

Section 1208

### **PART A**

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 PROVISION**

#### **ARTICLE 1**

#### **DEFINITIONS**

- (1) For the purpose of this Agreement, unless the context otherwise  
requires:

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

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

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

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

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

**employment** means employment as an employed person and the words **employ, employed or employer** shall be construed accordingly.

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

**family allowance**, in relation to the United Kingdom, includes child benefit payable under the legislation of the United Kingdom, and, in relation to Australia means family allowance payable under the legislation of Australia.

**former Agreement** means the Agreement on Social Security signed at Canberra on 29 January 1958, on behalf of the Parties, as amended by the Agreement on Social Security signed at Canberra on 16 August 1962 and by the Agreements set out in the

Exchanges of Notes at Canberra on 6 March 1975 and at London on 29 and 31 December 1986.

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

**gainfully occupied** means employed or self-employed.

**Guernsey** means the Islands of Guernsey, Alderney, Herm and Jethou.

**income support** means income support payable under the legislation of Great Britain and Northern Ireland and supplementary benefit payable under the legislation of the Isle of Man.

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

**means test** means any provision of the legislation of Australia which affects the payment or rate of a benefit on account of income or property.

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

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

**self-employed person** means a person who, in the applicable legislation, comes within the definition of a self-employed earner

or of a self-employed person or is treated as such, and the words “person is self-employed” shall be construed accordingly.

*spouse carer’s pension* means a carer’s pension payable to a husband under the legislation of Australia.

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

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

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

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

## ARTICLE 2

### SCOPE OF LEGISLATION

- (1) The provisions of this Agreement shall apply:
  - (a) in relation to the territory of the United Kingdom, to:
    - (i) the Social Security Acts 1975 to 1989 and the Social Security (Northern Ireland) Acts 1975 to 1989;
    - (ii) the Social Security Acts 1975 to 1989 (Acts of Parliament) as those Acts apply to the Isle of Man by virtue of Orders made, or having effect as if made,

under the Social Security Act 1982 (an Act of Tynwald);

- (iii) the Social Security (Jersey) Law, 1974;
- (iv) the Social Insurance (Guernsey) Law, 1978;
- (v) the Child Benefit Act 1975, the Child Benefit (Northern Ireland) Order 1975 and the Child Benefit Act 1975 (an Act of Parliament) as that Act applies to the Isle of Man by virtue of Orders made, or having effect as if made, under the Social Security Act 1982 (an Act of Tynwald); the Family Allowances (Jersey) Law, 1972 and the Family Allowances (Guernsey) Law, 1950;

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

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

- (2) Subject to the provisions of paragraphs (3) and (4) this Agreement shall apply also to any laws, orders and regulations which supersede, replace, amend, supplement or consolidate the legislation specified in paragraph (1).
- (3) This Agreement shall not affect any benefits payable under the legislation of either Party except in the manner set out in this Agreement.
- (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 subparagraph (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 subparagraph (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 had earnings or contributions credited to him shall be counted only once.

#### ARTICLE 8

##### CONVERSION OF AUSTRALIAN RESIDENCE

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

Great 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 subparagraph (a).
- (3) Where a married person is, or both that person and his or her spouse are, in receipt of a United Kingdom benefit or benefits, each of them shall be deemed, for the purpose of paragraph (2) and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.
- (4) If a person would receive an Australian benefit except for the operation of paragraph (2) or except for that person's failure to claim the benefit, then for the purpose of a claim by that person's spouse for a payment under the legislation of Australia that person shall be deemed to receive that benefit.
- (5) The reference in paragraph (4) to a payment under the legislation of Australia to the spouse of a person is a reference to a payment of:
  - (a) an age pension;
  - (b) an invalid pension;
  - (c) an unemployment benefit;

- (d) a sickness benefit;
  - (e) a sheltered employment allowance; or
  - (f) a rehabilitation allowance;
- under that legislation, whether payable by virtue of this Agreement or otherwise.
- (6) For the purpose of this Article *benefit* includes any additional earnings-related pension, incremental addition, invalidity allowance and age addition payable with the benefit.

#### ARTICLE 17

##### DUAL ENTITLEMENT IN AUSTRALIA

Where:

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

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

#### ARTICLE 18

##### DUAL ENTITLEMENT IN UK

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

ARTICLE 19

RECOVERY OF BENEFIT

- (1) Where a benefit is payable by a Party to a person in respect of a past period (in this Article referred to as *the first benefit*), and
  - (a) for all or part of that same period, the other Party has paid to that person a benefit under its legislation (in this Article referred to as *the second benefit*); and
  - (b) the amount of the second benefit would have been reduced had the first benefit been paid during that period, the competent authority of the former Party, at the request of the competent authority of the latter Party, shall:
  - (c) deduct from the first benefit an amount equal to the amount of the second benefit that would not have been paid had the first benefit been paid on a periodical basis throughout that past period; and
  - (d) transmit any sum deducted in accordance with sub-paragraph (c) above to the competent authority of the latter Party.

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

- (2) Where the United Kingdom has paid a benefit to a person in respect of a past period and:
  - (a) for all or part of that same period, Australia has paid to that person a benefit under its legislation; and
  - (b) the amount of the benefit paid by Australia would have been reduced had the United Kingdom paid its benefit during that period, the competent authority of Australia may determine that:
  - (c) the amount of its benefit which would not have been paid had the United Kingdom paid its benefit on a periodical basis throughout that period is a debt due by that person to Australia; and
  - (d) the amount, or any part, of that debt may be recovered from future benefits which Australia may pay under its legislation to that person.

- (3) A reference in paragraphs (1) or (2) to a payment under the legislation of a Party means a benefit payable whether by virtue of this Agreement or otherwise.
- (4) Where a person has received income support under the legislation of Great Britain, Northern Ireland or the Isle of Man for a period for which that person subsequently becomes entitled to any benefit under the legislation of Australia, the competent institution of Australia, at the request of and on behalf of the competent institution of Great Britain, Northern Ireland or the Isle of Man, shall withhold from the benefit due for that period the amount by which the income support paid exceeded what would have been paid had the benefit under the legislation of Australia been paid before the amount of income support was determined, and shall transmit the amount withheld to the competent institution of Great Britain, Northern Ireland or the Isle of Man.

#### ARTICLE 20

##### MEANING OF PERMANENTLY RESIDENT

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

#### ARTICLE 21

##### GAINFUL OCCUPATION IN AUSTRALIA

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

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

PART VII

ADMINISTRATION

ARTICLE 22

ADMINISTRATIVE ARRANGEMENTS

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

ARTICLE 23

DISCLOSURE OF INFORMATION

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



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

PART VIII

TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 24

TRANSITIONAL PROVISIONS

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

ARTICLE 25

ENTRY INTO FORCE

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

ARTICLE 26

TERMINATION PROVISIONS

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

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

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

For the Government of  
Australia:

Graham Richardson

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

Caithness

PART B

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

Note No. 29

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

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

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

22 April 1992

British High Commission

CANBERRA

Note No. 312327

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

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

Britain and Northern Ireland and the Government of Australia signed at London on 1 October 1990 and, in accordance with Article 25(1) of that Agreement, to notify the Department of Foreign Affairs and Trade that the Government of the United Kingdom has completed the constitutional and administrative requirements necessary for its implementation.

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

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

CANBERRA

23 April 1992.

PART C

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

Note No. 30

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

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

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

**“ARTICLE 15A**

**UK INCREASES FOR DEPENDANTS**

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

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

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

22 April 1992

British High Commission

Canberra

Note No. 312326

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

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

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

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

**‘ARTICLE 15A**

**UK INCREASES FOR DEPENDANTS**

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

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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 3—Agreement Between Australia and the Republic of Italy Providing for Reciprocity In Matters Relating to Social Security [see Note 9]**

Section 1208

Australia and the Republic of Italy,  
Wishing to strengthen the existing friendly relations between the two countries, and  
Desiring to co-ordinate 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) **Australian benefit** means a benefit referred to in Article 2 in relation to Australia;
  - (b) **benefit** means Australian benefit or Italian benefit;
  - (c) **competent authority** means, in the case of Australia, the Secretary to the Department of Social Security or an authorised representative of the Secretary and, in the case of Italy, the Ministry of Labour and Social Welfare;
  - (d) **dependants** means, in relation to Italy, persons who are within the categories of family members of a person insured, or of a pensioner, under the social security laws of Italy and who are recognized, by those laws, as the dependants of such a person or pensioner;
  - (e) **institution**, in relation to a Contracting Party, means an institution apart from a competent authority which is responsible for the application of this Agreement in respect



of that Contracting Party as specified in administrative arrangements made from time to time pursuant to Article 19;

- (f) **Italian benefit** means a benefit payable under the social security laws of Italy;
- (g) **Italian supplement** means a supplement paid in order to increase the amount of a benefit, derived from credited contributions and payable to a person, to the minimum amount specified for that benefit in the social security laws of Italy;
- (h) **month** means calendar month;
- (i) **period of Australian residence during working life**, in relation to a person, means the period, or the aggregate of the periods, during which that person has been a resident of Australia, other than any period—
  - (a) during which the person had not attained the age of 16 years; or
  - (b) after the person, being a woman, had attained the age of 60 years or, being a man, had attained the age of 65 years;but does not include any period deemed pursuant to subparagraph 1(c) of Article 7 to be a period in which that person was residing in Australia;
- (j) **period of credited contributions**, in relation to a person, means a period, or the total of two or more periods, of contributions used to acquire a benefit, and any period deemed to be a period of contributions, under the social security laws of Italy by that person but does not include any period deemed pursuant to sub-paragraph 1(d) of Article 7 to be a period of credited contributions in Italy;
- (k) **period of residence in Australia**, in relation to a person, means a period or the total of 2 or more periods, at any time, when that person was residing in Australia for the purposes of the social security laws of Australia, but does not include any period deemed pursuant to sub-paragraph 1(c) of Article 7 to be a period in which that person was residing in Australia;
- (l) **social security laws of Australia** means the Social Security Act 1947 of Australia as amended, not including

- amendments effected by laws made by Australia for the purpose of giving effect to an agreement on social security;
- (m) *social security laws of Italy* means legislation within the scope of this Agreement, in relation to Italy, by virtue of Article 2;
  - (n) *spouse carer's pension* means a carer's pension payable to a husband under the legislation within the scope of this Agreement relating to Australia;
  - (o) *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 social security laws of Italy, and is now deceased, and who are recognized by those laws as survivors of that person or pensioner;
  - (p) *widow* means, in relation to Australia, a de jure widow; and
  - (q) *year* means a period of 365 days or, if that period includes 29 February, 366 days.
2. A reference in this Agreement to additional pensions and mothers' and guardians' allowances for children is a reference to increases in the rate of any of the benefits referred to in items (i) to (vi) inclusive of subparagraph 1(a) of Article 2 and paid under provisions of the legislation within the scope of this Agreement in relation to Australia relating to the custody, care and control of a child or children.
3. In the application of this Agreement by a Contracting 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 Contracting Party, by virtue of Article 2.

## ARTICLE 2

### Legislative Scope

1. The legislation within the scope of this Agreement is:
  - (a) in relation to Australia: the Social Security Act 1947 as amended at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that Act, in so far as that Act and that legislation

provide for and for all matters in relation to the following benefits:

- (i) age pensions;
  - (ii) invalid pensions;
  - (iii) pensions payable to widows;
  - (iv) wives' pensions;
  - (v) double orphans' pensions;
  - (vi) spouse carers' pensions; and
  - (vii) additional pensions and mothers' and guardians' allowances for children; and
- (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 allowances 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 allowances for dependants of pensioners; and
  - (xi) unemployment allowances.

2. Notwithstanding the provisions of paragraph 1, the legislation within the scope of this Agreement 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 bilateral agreement on social security entered into by either Contracting Party.

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

#### ARTICLE 3

##### Personal Scope

Except as otherwise provided in Articles 4 and 20, this Agreement shall apply to persons who move between Australia and Italy and who are or have been resident in Australia or have been credited with contributions under the social security laws of Italy and, where applicable, to any dependants or survivors of those persons.

#### ARTICLE 4

##### Equality of Treatment

1. The citizens of each of the Contracting Parties shall be treated equally in the application of the social security laws of Australia and of Italy, respectively, and in any case in which entitlement to a benefit payable under those laws by a Contracting Party depends, in whole or in part, on citizenship of that Contracting Party, a person who is a citizen of the other Contracting Party shall, for the purposes of a claim for that benefit, be deemed to be a citizen of the first-mentioned Contracting Party.
2. The persons to whom this Agreement applies shall be treated equally by each of the Contracting Parties in regard to rights and obligations which arise by virtue of this Agreement in relation to each Contracting Party.

#### PART II—RESIDENCE OR PRESENCE OUTSIDE AUSTRALIA FOR PURPOSES OF QUALIFYING FOR AUSTRALIAN BENEFITS

#### ARTICLE 5

##### Residence or Presence in Italy

Where, apart from residing and being physically present in Australia, a person is qualified for an Australian benefit under the social security laws of Australia or by virtue of this Agreement but, on the date on which he or she lodges a claim for that benefit, he or she is:

- (a) residing in Australia and physically present in Italy;
  - (b) residing in Italy and physically present in Australia; or
  - (c) residing and physically present in Italy,
- that person shall be deemed, for the purposes of that claim, to be residing in and physically present in Australia on that date.

#### ARTICLE 6

##### Residence or Presence in a Third Country

A person who is a resident of Australia or Italy, or of a third country with which Australia enters into an agreement on social security, and is physically present in that third country may, if that agreement includes provisions for co-operation in the assessment and determination of claims for benefits, lodge in that third country a claim for an Australian benefit, and that person shall, for the purposes of that claim, be deemed to be residing in and physically present in Australia on the date of lodgement of that claim.

#### PART III—TOTALISATION AND PRO-RATA BENEFITS

#### ARTICLE 7

##### Totalisation of Periods of Residence and Periods of Contributions

1. Where a person to whom this Agreement applies has accumulated:
    - (a) a period of residence in Australia that is:
      - (i) less than the period required to qualify him or her, in respect of residence, under the social security laws of Australia for an Australian benefit; and
      - (ii) equal to or greater than the minimum period identified in accordance with paragraph 4 for that person; or
    - (b) a period of credited contributions that is:
      - (i) less than the period required to qualify him or her, in respect of contributions, under the social security laws of Italy for an Italian benefit; and
      - (ii) equal to or greater than the minimum period identified in accordance with paragraph 5 for that benefit,
- and, on the other hand, has accumulated both a period of Australian residence during working life and a period of credited contributions in Italy which, when added together,

are equal to or in excess of the required minimum period specified for that benefit by the legislation that is within the scope of this Agreement in relation to the Contracting Party by whom the benefit may be payable, then:

- (c) for the purposes of a claim for that Australian benefit, the last-mentioned period of credited contributions shall be deemed to be a period in which that person was residing in Australia; and
- (d) for the purposes of a claim for that Italian benefit, that period of Australian residence during working life shall be deemed to be a period of credited contributions in Italy.

2. Where a person to whom paragraph 1 applies:

- (a) has resided continuously in Australia for a period which is less than the minimum period of continuous residence required by the social security laws of Australia for entitlement of that person to an Australian benefit; and
- (b) has accumulated a period of credited contributions in 2 or more separate periods that exceed in total the minimum period referred to in sub-paragraph (a);

the total of the periods of credited contributions shall be deemed to be one continuous period and, by virtue of sub-paragraph 1(c), a period in which the person was residing continuously in Australia, equivalent to that total.

3. Where a period of residence in Australia and a period of credited contributions in Italy coincide, the period of coincidence shall be taken into account once by each of the Contracting Parties for the purposes of this Article, as follows:

- (a) for an Australian benefit: as a period of residence in Australia; and
- (b) for an Italian benefit: as a period of credited contributions.

4. The minimum period of Australian residence during working life 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 outside Australia: the minimum period required shall be 1 year's residence, of which at least 6 months must be continuous; and

- (b) for the purposes of an Australian benefit that is payable to a person in Australia: no minimum period shall be required.
5. 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 allowance: 1 year;
  - (g) for privileged inability pension: 1 year; and
  - (h) for survivor's pension: 1 year.
6. For the purposes of eligibility for voluntary insurance under the social security laws of Italy, a period of credited contributions in Italy in relation to a person shall be combined, where necessary, with any period of Australian residence during working life accumulated by that person, provided that the first-mentioned period totals at least one year.

#### ARTICLE 8

##### Australian Pro-Rata Benefits

1. Where an Australian benefit, other than a double orphan's pension, is payable by virtue of this Agreement:
- (a) to a person who is outside Australia: subject to paragraphs 2 and 9, the rate of that benefit shall be determined in accordance with the formula

$$A = \frac{PQ}{300}$$

where

**A** represents the rate of benefit payable;

**Q** represents, subject to paragraph 5, the number of whole months, plus one, accumulated in a period of Australian residence during working life by that person, but not exceeding 300;

**P** represents the rate of Australian benefit that would be payable to that person if:

- (i) he or she were in Australia and were qualified under the social security laws of Australia to receive that benefit;
- (ii) any amount paid to that person as an Italian supplement were not included as income for that person in determining the rate; and
- (iii) the amount of Italian benefit taken into account as income for those same purposes were calculated as follows:

$$Y = \frac{Q}{300} \times I$$

where

**Y** represents the amount of Italian benefit to be taken into account;

**Q** represents the same value as set out above in this subparagraph; and

**I** represents the amount of an Italian benefit payable to that person not including the amount of any Italian supplement;

- (b) to a person who is in Australia: the rate of that benefit shall, subject to paragraph 6, be calculated by disregarding, in the computation of his or her income, any Italian benefit, including any Italian supplement, which that person is entitled to receive, and by deducting the amount of that Italian benefit, including that supplement, from the rate of Australian benefit which would otherwise be payable to that person.
2. The rate mentioned in sub-paragraph 1(a) in relation to the symbol **A** shall not exceed the rate that would have been payable to that person if he or she had been in Australia and had met the requirements, in respect of residence, under the social security laws of Australia.
  3. Where the rate of a benefit calculated in accordance with sub-paragraph 1(b) is less than the rate of that benefit which would be payable under sub-paragraph 1(a) if the person concerned were



outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.

4. For the purposes of paragraph 3, a comparison of the rates of a benefit determined in accordance with subparagraphs 1(a) and 1(b) shall be made as at:
  - (a) the date of the first pension pay day occurring after the date on which the claim for the benefit was lodged; and
  - (b) each anniversary of that pension pay day for so long as the person concerned is entitled to the benefit,using, as the value of the symbol **Q** in subparagraph 1(a), the number of whole months, plus one, in the period of Australian residence during working life accumulated by the person at the date as at which the comparison is made.
5. In the case of a person and his or her spouse or of a widow, the value to be applied to the symbol **Q** for the purposes of subparagraph 1(a), in relation to a claim by either that person or each of that person and that spouse, or by that widow, shall be determined in accordance with those provisions of the social security laws of Australia which specify periods of residence for calculating benefits payable to persons outside Australia.
6. For the purposes of sub-paragraph 1(b), where:
  - (a) one or other, or both, of a person and his or her spouse are entitled to receive an Italian benefit; or
  - (b) a person is entitled to receive an increase in respect of his or her spouse in an Italian benefit payable to that person,the total of the Italian benefits payable to that person and his or her spouse shall be apportioned equally between them and disregarded in the computation 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.
7. In paragraph 6, a reference to a spouse of a person is a reference not only to the de jure spouse of that person but also to a de facto spouse within the meaning of that term under the social security laws of Australia.
8. Subparagraph 1(a) shall not apply to:

- (a) a person who becomes qualified to receive an invalid pension by virtue of this Agreement where the person became permanently incapacitated for work or permanently blind while in Australia or during a temporary absence from Australia;
  - (b) a widow who becomes qualified to receive a widow's pension by virtue of this Agreement by reason of the death in Australia or during a temporary absence from Australia of the widow's former spouse while the widow and that spouse were residing permanently in Australia; or
  - (c) a person, during any absence of the person from Australia that commences before 1 January 1996, who:
    - (i) becomes eligible to receive an Australian benefit by virtue of this Agreement;
    - (ii) was a resident of Australia or an absent resident on 8 May 1985; and
    - (iii) commences to receive that benefit before 1 January 1996.
9. An Australian benefit that is payable by virtue of this Agreement to a person who:
- (a) was a resident of Australia or an absent resident on 8 May 1985; and
  - (b) commences to receive that benefit before 1 January 1996,
- shall be paid, during any absence of that person from Australia that commences before 1 January 1996, at a rate calculated in accordance with subparagraph 1(b) and paragraph 3.

## ARTICLE 9

### Italian Pro-Rata Benefits

1. The amount of an Italian benefit payable to a person by virtue of this Agreement through the application of Article 7 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 residence during working life referred to in subparagraph 1(d) of Article 7, and accumulated to the date

- from which the benefit would be payable, for that person had accumulated under the social security laws 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 residence during working life 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 social security laws of Italy for entitlement to the maximum rate of the benefit concerned, that 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 of that person which was subject to contributions under the social security laws of Italy.

#### PART IV—PROVISIONS CONCERNING BENEFITS

##### ARTICLE 10

###### Payment of Supplementary and Additional Amounts

Where a benefit is payable by a Contracting Party by virtue of this Agreement to or in respect of a person, there shall also be payable any supplement or additional amount that is payable, in addition to that benefit, to or in respect of a person who qualifies for that supplement or additional amount under the social security laws of that Contracting Party.

##### ARTICLE 11

###### 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 by that person in Australia, other than periods of self-employment, shall be totalized with periods of credited contributions in Italy for that person, if those last-mentioned periods total one year or more.

ARTICLE 12

Double Orphan's Pension

Where a double orphan's pension is payable under the social security laws of Australia in respect of a child who was orphaned during a period of residence in Australia by that child, that pension shall, subject to the provisions of those laws, be payable while that child is in Italy to the person who has the custody, care and control of the child.

ARTICLE 13

Family Allowances

Family allowances payable under the social security laws of Italy:

- (a) shall be payable by virtue of this Agreement to persons who are receiving an Italian benefit payable under the social security laws of Italy, whether those persons are citizens of Australia or Italy, and who are residing in Australia; and
- (b) shall not preclude the payment of family allowance 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 purposes of reciprocity in relation to this Agreement be regarded as the Italian benefit equivalent to those Australian benefits described as:

- (c) wives' pensions;
- (d) spouse carers' pensions; and
- (e) additional pensions and mothers' and guardians' allowances for children.

ARTICLE 14

Wife's Pension and Spouse Carer's Pension

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, by virtue of this Agreement, an Australian benefit shall, for the purposes of this Agreement and in particular for the purposes of paragraph 6 of Article 8, be deemed to receive that pension by virtue of this Agreement.

PART V—MISCELLANEOUS PROVISIONS

ARTICLE 15

Lodgement of Claims

1. A claim for a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged:
  - (a) in the territory of either of the Contracting Parties in accordance with administrative arrangements made pursuant to Article 19; or
  - (b) in a third country if that country is of the kind referred to in Article 6,at any time after the Agreement enters into force.
2. Where a claim for a benefit of a Contracting Party is lodged in the territory of the other Contracting Party or in a third country in accordance with paragraph 1, the date on which the claim is so lodged shall be the date of lodgement of the claim for all purposes relating to the claim.

ARTICLE 16

Determination of Claims

1. In determining the entitlement of a person to a benefit by virtue of this Agreement:
  - (a) a period of Australian residence during working life and a period of credited contributions; and
  - (b) any event 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 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 social security laws of the Contracting Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.

3.(1) Where:

- (a) a claim is made for a benefit payable by one of the Contracting 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 Contracting 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.

- (2) Where a claim for a benefit is determined in accordance with sub-paragraph (1) 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.
- (3) In this paragraph and in paragraph 4, *benefit* is not limited to those benefits specified in Article 2.

4. Where:

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

then

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

- (e) the first-mentioned Contracting 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 17

##### Exclusion of Italian Supplement from Australian Income Test

Where a person receives both a benefit under the social security laws of Australia, including any laws made for the purpose of giving effect to an agreement on social security other than this Agreement, and an Italian benefit which includes an Italian supplement, that supplement shall not be included as income for the purposes of the social security laws of Australia.

#### ARTICLE 18

##### Portability of Benefits

1. Where a benefit is payable by a Contracting Party by virtue of this Agreement that benefit shall be payable within and outside the respective territory of both Contracting Parties.
2. Subject to paragraph 3, the payment of a benefit by a Contracting Party shall be subject to the provisions of this Agreement and of the legislation within the scope of this Agreement in relation to that Contracting Party.
3. The legislation referred to in paragraph 2 in relation to Australia shall not include those provisions which preclude the payment of benefits outside Australia.
4. A benefit payable by a Contracting Party by virtue of this Agreement shall be paid by that Contracting Party, whether the beneficiary is in the territory of the other Contracting Party or outside the respective territory of both Contracting Parties, without deduction for administrative fees and charges.

#### ARTICLE 19

##### Administrative Arrangements and Mutual Assistance

1. The competent authorities of the Contracting Parties shall make whatever administrative arrangements are necessary from time to time in order to implement this Agreement, or in relation to any matter arising under their respective social security laws, and,

where those arrangements are required to be made on a mutual basis, shall co-operate, both in regard to matters affecting the operation of both social security systems and of each of them.

2. The competent authorities of the Contracting Parties will, at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Contracting Parties with other countries.

## ARTICLE 20

### Exchange of Information

1. The competent authorities and the institutions of the Contracting Parties shall exchange such information as is necessary for the operation of this Agreement or of the social security laws of the Contracting Parties concerning all matters arising under this Agreement or under those laws.
2. The competent authorities and institutions of the Contracting Parties may exchange information of the kind referred to in paragraph 1 in relation to any person who has lodged a claim for or is in receipt of a benefit and who is outside the categories of persons referred to in Article 3.
3. Any information received by the competent authority or an institution of a Contracting Party pursuant to paragraphs 1 or 2 shall be protected in the same manner as information obtained under the social security laws of that Contracting Party 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 or the social security laws of the Contracting Parties and shall be used only for those purposes.
4. In no case shall the provisions of paragraphs 1, 2 and 3 be construed so as to impose on the competent authority or an institution of a Contracting Party the obligation:
  - (a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Contracting Party; or



- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party.
5. Unless there are reasonable grounds for believing the contrary, any information received by a competent authority or relevant institution from the competent authority or an institution of the other Contracting Party shall be accepted as valid or true, as the case requires.
6. A Contracting Party shall not raise any charges against the other Contracting Party for services of an administrative nature, including services rendered in accordance with Article 19, by that first-mentioned Contracting Party to the other in accordance with this Agreement, but that other Contracting Party shall meet any costs or expenses which are reasonably incurred for those services and are payable to another person or organisation.

#### ARTICLE 21

##### Appeals

1. Any person who is affected by a determination, direction, decision or approval made or given by the competent authority or institution of a Contracting Party, in relation to a matter arising by virtue of this Agreement shall have the same rights to the review, by administrative and judicial bodies of that Contracting Party, of that determination, direction, decision or approval as are provided under the domestic laws of that Contracting Party.
2. Documents relating to appeals that may be made to administrative bodies established by, or administratively for the purposes of, the social security laws of one of the Contracting Parties may be lodged in the territory of the other Contracting Party, in accordance with administrative arrangements made pursuant to Article 19 and any documents duly lodged in that manner shall be regarded as duly lodged for the purposes of those laws.
3. The date on which a document is duly lodged in the territory of one of the Contracting Parties in accordance with paragraph 2 shall determine whether that document is lodged within any time limit specified by the laws or administrative practices of the other Contracting Party which govern the appeal concerned.

## ARTICLE 22

### Review of Agreement

1. The Contracting Parties may agree at any time to review any of the provisions of this Agreement.
2. The Contracting Parties shall appoint representatives to meet as a committee of experts once during each year for the first four years after this Agreement comes into force and to review and report to the competent authorities on the operation and effectiveness of the Agreement, taking into account operational experience and practices in and between the two countries and between either of them and any other country with which either has entered into an agreement on social security.
3. The Contracting Parties shall consult on the further arrangements to review this Agreement and its operations to apply after it has been in force for four years.
4. The administrative arrangements made pursuant to Article 19 shall contain guidance on the role and method of operation of the committee of experts referred to in paragraph 2.
- 5.(1) In particular, where a Contracting Party enacts legislation that amends, supplements or replaces the legislation within the scope of this Agreement in relation to that Contracting Party, the Contracting Parties shall, if one of them so requests, consult on any matters that arise, as a consequence of that first-mentioned legislation, in relation to the continued operation or possible amendment of this Agreement.
- (2) For the purposes of the consultations referred to in subparagraph (1), the Contracting Parties may direct the committee of experts referred to in paragraph 2 to meet and report on matters which the Contracting Parties require to be considered by the committee.

## PART VI—FINAL PROVISIONS

## ARTICLE 23

### Entry Into Force

1. This Agreement shall be ratified by both Contracting Parties according to their respective procedures and shall enter into force

on the first day of the month next following the month in which the instruments of ratification are exchanged.

2. Immediately upon this Agreement entering into force, the Agreement made on 2 November 1972 between the Government of the Commonwealth of Australia and the Government of the Republic of Italy in relation to portability of pensions between Australia and Italy shall terminate.

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

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

DONE in duplicate at Rome the 23rd day of April 1986 in the English and Italian languages, both texts being equally authoritative.

FOR AUSTRALIA

Bob Hawke

FOR THE REPUBLIC  
OF ITALY

B. Craxi

## **Schedule 4—Agreement Between the Government of Australia and the Government of New Zealand on Social Security**

Section 1208

### **PART A**

The Government of Australia  
and  
The Government of New Zealand

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

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

WISHING to modify the Agreement providing for matters relating to social security which they entered into on the 31st day of October 1988 by means of a consolidated document,

HAVE agreed as follows:

### **PART I**

#### **GENERAL PROVISIONS**

##### **Article 1**

##### **Interpretation**

1. In this Agreement, unless the context otherwise requires:
  - (a) *benefit* means in relation to a Party, any of the benefits, pensions or allowances listed in Article 2(1), and includes

any amount, increase or supplement that is payable in addition to that benefit, pension or allowance to or in respect of a person who is eligible for that 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 New Zealand:  
the Director-General of Social Welfare or an authorised representative of the Director-General;
- (c) **competent institution** means,  
in relation to Australia:  
the Department of Social Security; and  
in relation to New Zealand:  
the New Zealand Income Support Service of the Department of Social Welfare;
- (d) **financial year** means, except in the case of the first financial year, the period from 1 July of any year to 30 June of the next year;
- (e) **first financial year** means the period from 1 January 1995 to 30 June 1995;
- (f) **foreign pension** means, in relation to a person, any payment made to that person under the national social security, social welfare or social insurance law of a third state;
- (g) **legislation** means,  
in relation to Australia, the law specified in subparagraph 1(a) of Article 2; and  
in relation to New Zealand, the laws specified in subparagraph 1(b) of Article 2;
- (h) **month** means, except as provided in Article 12, a calendar month, but where days are aggregated a month means 30 days;
- (i) **period of Australian working life residence** means,  
in relation to Australia, a period defined as such in the legislation of Australia but also includes any period during which the person to whom it relates, relied on Article 4(1) (b) of the agreement signed at Canberra on 31 October 1988

or relies on Article 8(2)(b)(ii) or (iii) to be eligible for an Australian benefit;

(j) ***period of New Zealand working life residence*** means, in relation to New Zealand, a period of ordinary residence in New Zealand between the ages of 16 and 65 but includes any period during which the person to whom it relates, relied on Article 4 (1) (b) of the agreement signed at Canberra on 31 October 1988 or relies on Article 7(2)(b)(ii) or (iii) to be eligible for a New Zealand benefit;

(k) ***ordinarily resident*** has, in relation to New Zealand, the meaning and interpretation given to it under the laws of New Zealand;

(l) ***partner*** means, in relation to New Zealand, spouse;

(m) ***territory*** means,

in relation to Australia: Australia as defined in the legislation of Australia; and

in relation to New Zealand: New Zealand only and not the Cook Islands, Niue or Tokelau;

and references to “Australia”, “New Zealand” or the “territory” of either shall be read accordingly;

(n) ***year*** means 12 calendar months.

2. Any term not defined in this Article shall, unless the context otherwise requires, have the meaning given to it in the legislation of either Party or, in the event of a conflict of meanings, by whichever of those laws is the more applicable in the circumstances.

## 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 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) widow B pension;
  - (iv) sole parent pension;
  - (v) wife pension; and
  - (vi) additional family payment payable to persons in receipt of the above benefits; 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;
  - (iii) invalids benefit;
  - (iv) widows benefit; and
  - (v) domestic purposes benefit for solo parents.
2. This Agreement shall apply to laws or regulations which extend the existing legislation to other categories of beneficiaries only if the two Parties so agree in a formal amendment to this Agreement.

### Article 3

#### Personal Scope

1. This Agreement shall apply to any person who:
  - (a) is or has been an Australian resident; and
  - (b) is or has been ordinarily resident in the territory of New Zealand; andto any other person who derives rights to a benefit from a person who is eligible for a benefit under this Agreement.
2. This Agreement shall not apply to persons who are unlawfully in the territory of a Party.
3. No person shall be considered to have been resident, present, ordinarily resident or to have acquired working life residence in the territory of either Party for any period during which that person was unlawfully in the territory of a Party.

Article 4

Equality of Treatment

Except as provided in 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 BENEFITS**

Article 5

Corresponding Benefits

1. For the purposes of this Agreement:
  - (a) the Australian age pension corresponds to New Zealand superannuation and veteran's pension;
  - (b) the Australian age pension paid to a woman who would receive a widows benefit if she was in New Zealand shall correspond to a New Zealand widows benefit;
  - (c) the Australian disability support pension corresponds to the New Zealand invalids benefit;
  - (d) the Australian widow B pension corresponds to the New Zealand widows benefit paid to persons without dependent children; and
  - (e) the Australian sole parent pension corresponds to the New Zealand domestic purposes benefit for solo parents and widows benefit paid to persons with dependent children.

Article 6

Partner Related Benefits

1. A person who receives a benefit under the legislation of either Australia or New Zealand, due to the fact that the partner of that person receives a benefit by virtue of this Agreement, shall be considered to be receiving that benefit under this Agreement.
2. If a person is eligible for and is receiving a New Zealand benefit under the legislation of New Zealand independently of that person's partner who is receiving a New Zealand benefit by virtue



of this Agreement, that person shall not be considered to be receiving his or her benefit under this Agreement.

3. If a person is eligible for and is receiving an Australian benefit under the legislation of Australia independently of that person's partner who is receiving an Australian benefit by virtue of this Agreement, that person shall not be considered to be receiving his or her benefit under this Agreement.

#### Article 7

##### Eligibility for New Zealand Benefits by Former Residents of Australia

1. A person who does not meet the residence criteria for New Zealand superannuation but would otherwise be eligible for that benefit under the legislation of New Zealand shall be eligible for New Zealand superannuation if that person:
  - (a) has reached the age of eligibility under the legislation of New Zealand or under the legislation of Australia for a corresponding benefit, whichever is the later age;
  - (b) is one of the following:
    - (i) ordinarily resident in New Zealand;
    - (ii) present in New Zealand and has the intention of remaining in New Zealand for at least one year; or
    - (iii) present in New Zealand and has been present in New Zealand for at least one year at the date of grant of that benefit;
  - (c) either:
    - (i) was an Australian resident immediately before arriving in New Zealand; or
    - (ii) was, on entry into New Zealand, the holder of a valid Australian passport; and
  - (d) had been an Australian resident for a period of not less than 10 years, or an aggregate of 10 years, after age 16.
2. A person who does not meet the residence criteria for any New Zealand benefit (other than New Zealand superannuation) but who would otherwise be eligible for that benefit under the legislation of New Zealand shall be eligible for that benefit if that person:

- (a) has reached the age of eligibility under the legislation of New Zealand or under the legislation of Australia, for the corresponding benefit, whichever is the later age;
  - (b) is one of the following:
    - (i) ordinarily resident in New Zealand;
    - (ii) present in New Zealand and has the intention of remaining in New Zealand for at least one year; or
    - (iii) present in New Zealand and has been present in New Zealand for one year  
at the date of grant of that benefit;
  - (c) either:
    - (i) was an Australian resident immediately before arriving in New Zealand; or
    - (ii) was, on entry into New Zealand, the holder of a valid Australian passport; and
  - (d) had been an Australian resident for a period of not less than 10 years or an aggregate of 10 years.
3. No person other than a widower shall be eligible for a domestic purposes benefit for solo parents by virtue of this Agreement or the legislation of New Zealand if that person's right to remain in New Zealand is dependent on that person being an Australian citizen or a former Australian resident, unless that person, immediately before the claim for benefit was lodged has either:
- (a) been continuously present in New Zealand for at least 26 weeks; or
  - (b) been ordinarily resident in New Zealand for a period of at least 12 months.
4. Nothing in this Article or Article 8 shall affect the eligibility of a person who is in receipt of a New Zealand benefit under the temporary absence provisions under the legislation of New Zealand.
5. No person shall be eligible for a New Zealand benefit at the same time as he or she is in receipt of an Australian benefit.
6. A person shall not be eligible for a benefit under this Agreement or under the legislation of New Zealand if that person fails to supply the competent authority of Australia or New Zealand with

any information to which that person has access and which is legally required to establish:

- (a) eligibility for a benefit under this Agreement; or
- (b) the amount which the Government of Australia is required to reimburse the Government of New Zealand under this Agreement.

#### Article 8

##### Eligibility for Australian Benefits by Former Residents of New Zealand

1. A person who does not meet the residence criteria for an age pension but who would otherwise be eligible for that benefit under the legislation of Australia shall be eligible for an age pension if that person:
  - (a) has reached the age of eligibility under the legislation of Australia or under the legislation of New Zealand, for a corresponding benefit, whichever is the later age;
  - (b) is one of the following:
    - (i) an Australian resident;
    - (ii) in Australia and has the intention of remaining in Australia for at least one year; or
    - (iii) in Australia and has been in Australia for one year at the date of grant of that benefit;
  - (c) either:
    - (i) was ordinarily resident in New Zealand immediately before arriving in Australia; or
    - (ii) was, on entry into Australia, a New Zealand citizen; and
  - (d) had been ordinarily resident in New Zealand for a period of not less than 10 years, or an aggregate of 10 years, after age 16.
2. A person who does not meet the residence criteria for an Australian benefit (other than an age pension) but who would otherwise be eligible for that benefit under the legislation of Australia shall be eligible for that benefit if that person:
  - (a) has reached the age of eligibility under the legislation of Australia or under the legislation of New Zealand for a corresponding benefit, whichever is the later age;
  - (b) is one of the following:

- (i) an Australian resident;
  - (ii) in Australia and has the intention of remaining in Australia for at least one year; or
  - (iii) in Australia and has been in Australia for one year at the date of grant of that benefit;
  - (c) either:
    - (i) was ordinarily resident in New Zealand immediately before arriving in Australia; or
    - (ii) was, on entry into Australia, a New Zealand citizen; and
  - (d) had been ordinarily resident in New Zealand for a period of not less than 10 years or an aggregate of 10 years.
3. No person other than a widow or a widower shall be eligible for a sole parent pension by virtue of this Agreement or the legislation of Australia if that person's right to remain in Australia is dependent on that person being a New Zealand citizen, unless that person, immediately before the claim for benefit was lodged, has either:
- (a) been continuously present in Australia for at least 26 weeks; or
  - (b) been an Australian resident for a period of at least 12 months.
4. Subject to this Agreement, a person who is ordinarily resident in New Zealand shall not be eligible for an Australian portable benefit where that person would be eligible for a New Zealand benefit.
5. A person who is present, but not ordinarily resident, in New Zealand shall not be eligible for an Australian portable benefit after a period which exceeds the period of temporary absence allowable for the corresponding New Zealand benefit under the legislation of New Zealand.
6. Where, at the date this Agreement comes into force, a person is ordinarily resident in or present in New Zealand and is in receipt of an Australian benefit, the competent authority of New Zealand shall calculate the rate of its benefit as if that Australian benefit was not being received and Australia shall cease paying its benefit

to that person on any date New Zealand grants its benefit to that person.

7. No person shall be eligible for an Australian benefit at the same time as he or she is in receipt of a New Zealand benefit.
8. A person shall not be eligible for a benefit under this Agreement or under the legislation of Australia if that person fails to supply the competent authority of Australia or New Zealand with any information to which that person has access and which is legally required to establish:
  - (a) eligibility for a benefit under this Agreement; or
  - (b) the amount which the Government of New Zealand is required to reimburse the Government of Australia under this Agreement.

#### Article 9

##### Calculation of Rates of Benefits

1. Except as provided in paragraphs 2 and 3, if a benefit is payable by a Party under this Agreement, the amount of that benefit will be determined according to the legislation of that Party.
2. If a person who is receiving a benefit under this Agreement, is also in receipt of a foreign pension, that pension shall not be regarded as income, but the maximum rate of benefit otherwise payable to that person shall be reduced by the amount of the foreign pension.
3. For the purposes of paragraph 2, if a person receiving a benefit has a partner:
  - (a) in relation to Australia, each partner shall be considered to receive one half of the total of any foreign pensions received by either partner; and
  - (b) in relation to New Zealand, any foreign pension received by that person only shall be directly deducted first from the rate of New Zealand benefit payable to that person and then any excess shall be directly deducted from the rate of New Zealand benefit payable to that person's partner and any foreign pension received by that person's partner shall be directly deducted first from the rate of New Zealand benefit payable to that partner and then any excess shall be directly

deducted from the rate of New Zealand benefit payable to that person.

4. Where members of a couple are in receipt of respectively, New Zealand and Australian benefits, each Party shall, when calculating the rate of benefit payable, disregard the amount of benefit paid by the other Party to the other member of the couple.

#### Article 10

##### Residence in Third States

1. If a person who has been an Australian resident and has been ordinarily resident in New Zealand is residing in a third State with which both, or either, Australia or New Zealand have or has a bilateral social security agreement:
  - (a) any benefit from New Zealand for which that person is eligible shall not be considered as income or directly deducted in assessing the rate of any Australian benefit for which that person is eligible; and
  - (b) any benefit from Australia for which that person is eligible shall not be considered as income or directly deducted in assessing the rate of any New Zealand benefit for which that person is eligible.

#### PART III

##### REIMBURSEMENT PROVISIONS

#### Article 11

##### Criteria for Reimbursement of Benefits

1. Except as provided in Article 13 and paragraph 3 of this Article, the Government of New Zealand shall reimburse the Government of Australia, on and from 1 January 1995, in accordance with the provisions of Article 12, for any benefit paid to a person who:
  - (a) has a period of Australian working life residence of less than 10 years;
  - (b) either:
    - (i) had been ordinarily resident in New Zealand immediately before arriving in Australia; or

- (ii) was, on entry into Australia, the holder of a valid New Zealand passport;
  - (c) had been ordinarily resident in New Zealand for a period of not less than 10 years or an aggregate of 10 years;
  - (d) would be eligible for a corresponding benefit from New Zealand if that person had been resident in New Zealand;
  - (e) is an Australian resident and in Australia or is in receipt of a benefit by virtue of Article 8 (1)(b)(ii) or (iii) or Article 8(2)(b)(ii) or (iii); and
  - (f) last became an Australian resident on or after 1 January 1983.
2. Except as provided under Article 12 and paragraph 3 of this Article, the Government of Australia shall reimburse the Government of New Zealand, on and from 1 January 1995, for any benefit paid to a person who:
- (a) has a period of New Zealand working life residence of less than 10 years;
  - (b) either:
    - (i) had been an Australian resident immediately before arriving in New Zealand; or
    - (ii) was, on entry into New Zealand, the holder of a valid Australian passport;
  - (c) had been resident in Australia for a period of not less than 10 years or an aggregate of 10 years;
  - (d) would be eligible for a corresponding benefit from Australia if that person had been resident in Australia;
  - (e) is resident and present in New Zealand or is in receipt of a benefit by virtue of Article 7(1)(b)(ii) or (iii) or Article 7(2)(b)(ii) or (iii); and
  - (f) last became ordinarily resident in New Zealand on or after 1 January 1983.
3. Neither Party shall be required to reimburse the other Party for any sole parent pension or domestic purposes benefit payable to a person, other than a widow or widower, if that person has been in receipt of a sole parent pension for a period of less than 12 consecutive months.

4. Working life residence shall continue to be accruable during any period a benefit (other than age pension or New Zealand superannuation) is paid by either Australia or New Zealand.
5. Neither Party shall be required to reimburse the other Party for a benefit paid to a person who is outside the territory of the Party paying the benefit for a period which exceeds the period of temporary absence allowable under the legislation of New Zealand in respect of that benefit or a corresponding benefit.
6. Any Australian benefit, as defined in Article 1 of this Agreement, payable by virtue of the former Agreement at the date on which this Agreement comes into force, shall be reimbursable by the Government of New Zealand at a rate calculated under Article 12 of this Agreement.

#### Article 12

##### Rate of Reimbursement of Benefit

1. The amount a Party shall be required to reimburse the other Party for a benefit under Article 11 shall be calculated as follows:
  - (a) by dividing the number of whole months of working life residence in the reimbursing country of the person receiving the benefit by:
    - (i) 480 in the case of an age pension; and
    - (ii) 300 in the case of any other benefit; and
  - (b) by multiplying the results under subparagraph (a) by the nominal benefit rate.
2. The nominal benefit rate shall be calculated as follows:
  - (a) in relation to an Australian age pension, either:
    - (i) the amount of age pension actually paid; or
    - (ii) the rate of New Zealand superannuation that is payable under the legislation of New Zealand:
      - A. in the case of a single person living alone the rate payable to a single person who is living alone;
      - B. in the case of a single person not living alone the rate payable to a single person who is not living alone;



C. in the case of a married person whose partner is not receiving a wife pension, the rate payable to a married person whose spouse is also eligible for New Zealand superannuation in his or her own right;

less an amount equal to the income of that person as it exceeds the applicable New Zealand superannuation thresholds under the Income Tax Act of 1976, multiplied by the prevailing rate of the New Zealand superannuation surcharge; or

D. in the case of a married person whose partner is receiving a wife pension, the rate payable to a married person whose spouse is not eligible for New Zealand superannuation in his or her own right and who elects to receive the income tested rate applicable after 1 April 1991;

whichever is the lesser amount;

(b) in relation to other Australian benefits, either:

- (i) the amount of Australian benefit actually paid; or
- (ii) the rate of the corresponding New Zealand benefit (after the New Zealand income test applicable to that benefit has been applied) which would be payable if that person was resident in New Zealand;

whichever is the lesser amount;

(c) in relation to New Zealand superannuation, either:

- (i) the amount of New Zealand superannuation actually paid, less (except where the rate of payment is subject to an income test under the legislation of New Zealand) an amount equal to the income of that person as it exceeds the applicable New Zealand superannuation thresholds under the Income Tax Act of 1976, multiplied by the prevailing rate of the New Zealand superannuation surcharge; or
- (ii) the rate of age pension, after the income and assets tests applicable to that person had been applied, which would be payable if that person was resident in Australia;

whichever is the lesser amount; and

(d) in relation to other New Zealand benefits, either:

- (i) the amount of New Zealand benefit actually paid; or
  - (ii) the rate of the corresponding Australian benefit (after the Australian income and assets tests applicable to the benefit have been applied) which would be payable if that person was resident in Australia;whichever is the lesser amount.
3. For the purposes of paragraph (2) the income on which any income test is applied to determine the nominal benefit rate of a person shall not include the amount of the benefit actually paid, any additional amount or supplement or any foreign pension paid to that person or that person's partner.
4. If a person's period of working life residence would 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.
5. Neither Party shall be required to reimburse the other for any additional amount or supplement that is paid to a person who is in receipt of a benefit under this Agreement and in determining the nominal benefit rate, an amount of benefit actually paid or rate of benefit shall not include any additional amount or supplement.
6. In the case of a married couple, each partner shall be assessed individually for the purposes of deciding whether that person's benefit is reimbursable under Article 11 and estimating the rate of reimbursement under this Article.

#### Article 13

##### Phase-in Provisions

1. In respect of benefits which were granted before 1 January 1995, for the first 4 financial years, each Party shall be required to reimburse the other Party for only a percentage of the amount which is reimbursable under Article 12 in respect of those benefits (in this Article called *the reimbursable amount of the historical group*). That percentage shall be calculated as follows:
  - (a) 15% of the reimbursable amount of the historical group for the first financial year ending on 30 June 1995;
  - (b) 40% of the reimbursable amount of the historical group for the financial year ending on 30 June 1996;

- (c) 60% of the reimbursable amount of the historical group for the financial year ending on 30 June 1997; and
  - (d) 80% of the reimbursable amount of the historical group for the financial year ending on 30 June 1998;
- and thereafter shall pay the full reimbursable amount.
- 2. Notwithstanding paragraph (1)(a) above, the amount to be reimbursed by a Party for the financial year ending on 30 June 1995, under that paragraph shall be at least equal to the amount that would have been reimbursed by that Party under the 1988 Agreement between the Parties.
  - 3. A Party shall reimburse the other Party the full amount to be reimbursed by it under Article 12 for all benefits granted by the other Party on or after 1 January 1995.

#### Article 14

##### Reimbursement Procedures

- 1. At least 2 months before the start of the financial year, while any benefit is reimbursable under this Agreement, the competent institution of Australia shall supply the competent institution of New Zealand with a written estimate of the amount of the reimbursement for that financial year and the competent institution of New Zealand shall supply the competent institution of Australia with a written estimate of the amount of the reimbursement for that financial year, except in respect of the first financial year, when the estimate shall be made at least 2 months before 1 January 1995.
- 2. The amount the competent institution of a Party is required to pay to the competent institution of the other Party for a financial year, during that financial year, shall equal the amount that the other Party estimated under paragraph 1.
- 3. Subject to paragraph 4, the amount determined in paragraph 1 shall be payable in equal quarterly instalments by the competent institution of a Party to the competent institution of the other Party on 1 July, 1 October, 1 January and 1 April.
- 4. In regard to amounts to be reimbursed by each Party in the first financial year of operation of this Agreement, the full amount

determined in paragraph 1 shall be payable within 3 months of 1 January 1995.

5. Within 3 months after the end of the financial year or the first financial year:
  - (a) the competent institution of Australia shall provide the competent institution of New Zealand with a written reconciliation statement covering the amounts estimated as payable under paragraph 1 and the amounts actually reimbursable in that financial year; and
  - (b) the competent institution of New Zealand shall provide the competent institution of Australia with a written reconciliation statement covering the amounts estimated as payable under paragraph 1 and the amounts actually reimbursable in that financial year.
6. If the reconciliation statements referred to in paragraph 5 show that an amount is payable by one Party to the other to balance the payments in the relevant financial year, then that amount shall be paid, together with any interest payable under paragraph 7, at the time of the next quarterly payment referred to in paragraph 3.
7. If at the end of a financial year a Party is required to make a payment to the other Party under paragraph 6, then interest will be payable on the total amount outstanding. The total interest payable shall be the sum of the four amounts of interest payable in respect of each quarterly reimbursement period referred to in paragraph 3, calculated using the formula in paragraph 8.
8. In respect of each quarterly reimbursement period referred to in paragraph 3, the interest payable under paragraph 7 shall be calculated on the following basis:

$$\text{Interest payable} = \frac{\text{NP} \times \left[ \text{N} \times \text{I} \right]}{365}$$

where:

NP = Nominal payment equal to one quarter of the amount payable by a Party to the other to balance the payments in the relevant financial year.

- N = The number of days between the date at which the nominal payment would have been paid if no estimation error had occurred (ie, the commencement of the relevant quarter) and the date the payment is settled.
- I = The relevant interest rate referred to in paragraph 9.
9. For the purposes of paragraph 8, the *relevant interest rate* shall be:
- (a) in the case of refunds made by the Government of Australia, the 26 week New Zealand Government Treasury Bill rate expressed in per annum terms obtained in the regular Treasury Bill auction closest in time to when the nominal payment would have been paid if the estimation under paragraph 1 had been exact; and
  - (b) in the case of refunds made by the Government of New Zealand, the 180 day Australian Government Treasury Bill rate expressed in per annum terms applicable at the time the nominal payment would have been paid if the estimation under paragraph 1 had been exact.
10. Any interest payable under paragraph 7 in respect of a financial year shall be payable at the same time as the payment under paragraph 6.
11. For administrative purposes, the gross quarterly amounts payable by each Party (comprising the estimated reimbursable amount for the next quarter under paragraph 3 and any nominal payment under paragraph 6 and associated interest payments under paragraph 7) shall be netted between the two Parties.
12. For the purposes of netting in paragraph 11, the relevant cross rate between the Australian dollar and the New Zealand dollar shall be determined by using the mid-rates as quoted at 3 pm on the ASAP page of Reuters, or equivalent page, 5 working days prior to the relevant quarterly settlement date.
13. For net payment purposes, the Government of Australia shall reimburse the Government of New Zealand in New Zealand dollars and the Government of New Zealand shall reimburse the Government of Australia in Australian dollars.
14. If a Party has forwarded to the other Party a reconciliation statement referred to in paragraph 5, that Party shall not be entitled

to claim any further reimbursement for benefit payments made in that financial year.

15. At any time, on the agreement of the Parties, the procedures under this Article may be modified or substituted by an exchange of notes.

#### PART IV

#### MISCELLANEOUS PROVISIONS

#### Article 15

#### Benefits for the Unemployed

1. This Article applies to any person who is in the territory of a Party and whose right to remain in that territory is dependent upon that person being:
  - (a) in the case of New Zealand, an Australian citizen or a former Australian resident; and
  - (b) in the case of Australia, a New Zealand citizen.
2. Subject to paragraph 3, a person to whom this Agreement applies shall not be eligible to receive benefits for the unemployed from a Party unless the person:
  - (a) has been continuously present in the territory of that Party for not less than 6 months since the date of his or her most recent arrival in that territory; and
  - (b) meets those criteria which are specified for that benefit by the legislation of that Party.
3. This Article shall not apply to a person who has been:
  - (a) in relation to Australia, an Australian resident; or
  - (b) in relation to New Zealand, ordinarily resident in New Zealand,for the period of 12 months immediately before the date on which the person lodges a claim for a benefit for the unemployed in, respectively, Australia or New Zealand.
4. For the purposes of this Article only, benefits for the unemployed means, in relation to Australia:
  - (i) job search allowance;

- (ii) newstart allowance; and
  - (iii) young homeless allowance; and
- in relation to New Zealand:
- (i) unemployment benefit;
  - (ii) job search allowance;
  - (iii) training benefit; and
  - (iv) independent youth allowance.

#### Article 16

##### Mutual Assistance and Exchange of Information

1. The competent authorities and competent institutions responsible for the application of this Agreement:
  - (a) shall communicate to the other Party, in relation to each benefit granted by that Party and which is reimbursable under Article 11, all the information required to:
    - (i) verify that the person in receipt of that benefit is eligible to receive it under the legislation of the Party granting the benefit;
    - (ii) verify that the person in receipt of that benefit would be eligible for the corresponding benefit if he or she was resident in Australia or ordinarily resident in New Zealand, as the case may be;
    - (iii) verify that the amount of benefit paid is the amount payable;
    - (iv) determine the rate of the corresponding benefit that would be payable if the person in receipt of the benefit were resident in Australia or ordinarily resident in New Zealand as the case may be; and
    - (v) determine the amount of benefit that is reimbursable under Article 11;
  - (b) 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
  - (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 the administrative arrangement made pursuant to 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 or permitted under the laws of a Party, any information about an individual which is transmitted in accordance with this Agreement to a competent authority or competent institution of that Party by a competent authority or a competent institution of the other Party is confidential and shall be used only for purposes of implementing this Agreement and the social security laws of either Party.
4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the competent authority or competent institution of a Party the obligation:
  - (a) to carry out administrative measures at variance with the laws or the administrative practices 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 either Party.
5. Communication between the Parties, including the exchange of information may be conducted by electronic data transfer should the Parties so agree in an exchange of letters at any time.
6. The competent authorities of the Parties shall exchange such information as is necessary for the operation of this Agreement or of the social security laws of the Parties concerning all matters arising under this Agreement, apart from matters relating to maintenance payments or liable parent contributions.

#### Article 17

##### Administrative Arrangement

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



Article 18

Recovery of Overpayments

1. Where:
  - (a) 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; and
  - (b) a benefit is payable by the other Party to that person, whether by virtue of this Agreement or otherwise,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 the amount equivalent to the excess payment referred to in subparagraph (a) from the amount due in respect of the last mentioned benefit.
2. The amount of an excess payment referred to in paragraph 1 shall be the amount determined by the competent institution of the Party by whom the excess payment was made.
3. The rate of deductions made in accordance with paragraph 1 from amounts due in respect of a benefit, and any incidental or related matters, shall be determined by the competent institution of the Party by whom the benefit is payable, in accordance with the legislation or practice of that Party.
4. Amounts deducted by the competent institution of one of the Parties in accordance with paragraph 1, and any amounts received by that competent institution pursuant to arrangements referred to in paragraph 3, shall be remitted to the other competent institution as agreed between the competent institutions or in any administrative arrangement made pursuant to Article 17.
5. For the purposes of this Article, *benefit* shall also include:  
in relation to New Zealand:
  - (a) unemployment benefit;
  - (b) sickness benefit;
  - (c) transitional retirement benefit;
  - (d) independent youth benefit;
  - (e) job search allowance;

- (f) training benefit;
  - (g) domestic purposes benefit for caregivers and women alone;
  - (h) orphans benefit; and
  - (i) unsupported child's benefit; and
- in relation to Australia:
- (a) job search allowance;
  - (b) newstart allowance;
  - (c) sickness allowance;
  - (d) carer pension;
  - (e) double orphans pension; and
  - (f) family payments.

#### Article 19

##### 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 20

##### Review of the 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 meet for the purpose of reviewing the implementation of this Agreement within 12 months of the Agreement coming into force.
3. Where a Party amends, supplements or replaces its legislation, the Parties shall consult on any consequence of that change to the legislation and on the continuing implementation of the Agreement including on whether any amendment to the Agreement is necessary.
4. 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

### FINAL PROVISIONS

#### Article 21

#### Transitional Provisions

1. Subject to this Agreement, in determining the eligibility of a person for a benefit payable by virtue of this Agreement, or in determining the reimbursement liability of a Party:
  - (a) a period as an Australian resident and a period during which a person was ordinarily resident in New Zealand; 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. 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. If this Agreement does not come into force on 1 January 1995, the Parties shall reimburse each other from 1 January 1995, at the rate provided under Article 12 of this Agreement, but only to the amount provided under Article 13, for all benefits granted before the Agreement comes into force that meet the criteria for reimbursement under Article 12 of this Agreement.
4. Any right to a benefit outside the scope of this Agreement acquired by a person in accordance with the provisions of the Agreement signed at Canberra on 31 October 1988 shall continue.
5. Subject to this Agreement, when this Agreement comes into force, the Agreement between the Government of Australia and the Government of New Zealand providing for Reciprocity in Matters relevant to Social Security signed at Canberra on 31 October 1988 shall terminate and persons who were receiving benefits by virtue

of that 1988 Agreement shall receive those benefits by virtue of this Agreement.

Article 22

Entry into Force and Termination

1. This Agreement shall come into force on 1 January 1995 if, before that date, the Parties have notified each other by exchange of notes through the diplomatic channel that all requirements that are necessary to give effect to this Agreement in their law have been met. Otherwise it shall come into force on the first day of the second month following the month in which the exchange of notes took place.
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 written notice through the diplomatic channel indicating the intention of either 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 eligible to receive, benefits.
4. In the event that this Agreement is terminated in accordance with paragraph 2, the reimbursement provisions of this Agreement shall also continue to apply to all benefits payable at the time of the expiry of the 12 months mentioned in that paragraph.

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

DONE in duplicate at Wellington this Nineteenth day of July 1994

Peter Baldwin

Peter Gresham

FOR THE GOVERNMENT  
OF AUSTRALIA

FOR THE GOVERNMENT  
OF NEW ZEALAND

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PART B

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF  
NEW ZEALAND

WISHING to amend and supplement the Agreement on Social Security between the two States signed at Wellington on the nineteenth day of July 1994, have agreed as follows:

Article I

1. In this Protocol **Agreement** means the Agreement between the Government of New Zealand and the Government of Australia on Social Security signed on the nineteenth day of July 1994 at Wellington.
2. In the application of this Protocol (the first Protocol to the Agreement) any term defined in the Agreement shall, unless the context otherwise requires, have the same meaning.

3. In the application of this Protocol any term not defined in the Agreement or this Protocol shall, unless the context otherwise requires, have the meaning assigned to it by the legislation of either Party.

Article II

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

“(j) *period of New Zealand working life residence* means, in relation to New Zealand, a period of ordinary residence in New Zealand between the ages of 16 and 65, but includes any period during which the person to whom it relates relied on Article 4(2)(b) of the Agreement between the Government of Australia and the Government of New Zealand providing for reciprocity in matters relating to Social Security signed at Canberra on 31 October 1988 or relies on Article 7(2)(b)(ii) or (iii) of the Agreement to be eligible for a New Zealand benefit.”

Article III

Subparagraph (a) of paragraph 1 of Article 2 of the Agreement shall be deleted and substituted by the following:

- “(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) widow B pension;
  - (iv) sole parent pension;
  - (v) wife pension;
  - (vi) partner allowance payable to the female partner of a person in receipt of an age pension or a disability support pension (referred to in this Agreement as partner allowance);
  - (vii) parenting allowance payable to the female partner of a person in receipt of an age pension or a disability support pension (referred to in this Agreement as parenting allowance); and

(viii) additional family payment payable to persons in receipt of the above benefits; and”

Article IV

In order to clarify the original intentions of the Parties when first drafting Article 3 of the Agreement, paragraph 1 of Article 3 of the Agreement shall be deleted and substituted by the following:

- “1. This Agreement shall apply to any person who:
- (a) is or has been an Australian resident; or
  - (b) is or has been ordinarily resident in the territory of New Zealand; and
- to any other person who derives rights to a benefit from a person who is eligible for a benefit under this Agreement.”

Article V

Subparagraph (b) of paragraph 1 of Article 12 of the Agreement shall be deleted and substituted by the following:

- “(b) by multiplying the nominal benefit rate (as calculated below) by the smaller of:
- (i) the result obtained under subparagraph (a); or
  - (ii) one.”

Article VI

Paragraph 3 of Article 14 of the Agreement shall be deleted and substituted by the following:

- “3. Subject to paragraph 4, the amount determined in paragraph 1 shall be payable in equal quarterly instalments by the competent institution of a Party to the competent institution of the other Party on 1 July, 1 October, 1 January and 1 April or, if those dates are not banking days, on the first banking day thereafter.”

Article VII

Paragraph 4 of Article 15 of the Agreement shall be deleted and substituted by the following:

- “4. For the purposes of this Article only, benefits for the unemployed means, in relation to Australia:
- (i) job search allowance; and

- (ii) newstart allowance; and  
in relation to New Zealand:  
(i) unemployment benefit;  
(ii) job search allowance;  
(iii) training benefit; and  
(iv) independent youth allowance.”

Article VIII

Upon an exchange of notes 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, this Protocol shall be deemed to have entered into force on 1 January 1995, except for Article III which shall be deemed to have entered into force on 1 July 1995.

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

DONE in duplicate at Sydney this seventh day of September 1995.

FOR THE GOVERNMENT OF  
AUSTRALIA:

PETER BALDWIN

FOR THE GOVERNMENT OF NEW  
ZEALAND:

GRAHAM FORTUNE

PART C

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF  
NEW ZEALAND

WISHING to amend and supplement the Agreement on Social Security between the two States signed at Wellington on the nineteenth day of July 1994, have agreed as follows:

Article I

1. In this Protocol **Agreement** means the Agreement between the Government of New Zealand and the Government of Australia on Social Security signed on the nineteenth day of July 1994 at



Wellington as amended by the first Protocol signed on the seventh day of September 1995 at Sydney.

2. In the application of this Protocol (the second Protocol to the Agreement) any term defined in the Agreement shall, unless the context otherwise requires, have the same meaning.
3. In the application of this Protocol any term not defined in the Agreement or this Protocol shall, unless the context otherwise requires, have the meaning assigned to it by the legislation of either Party.

#### Article II

1. The heading to Article 7 of the Agreement shall be amended to read “Eligibility for New Zealand Benefits”.
2. Paragraphs 4 and 5 of Article 7 of the Agreement shall be deleted and the remaining paragraph shall be renumbered as paragraph 4.

#### Article III

1. The heading to Article 8 of the Agreement shall be amended to read “Eligibility for Australian Benefits”.
2. Paragraphs 4 and 5 of Article 8 of the Agreement shall be deleted and the remaining paragraphs shall be renumbered as paragraphs 4, 5 and 6.

#### Article IV

A new Article shall be inserted after Article 8 of the Agreement, to read as follows:

##### “Article 8A

##### Portability of Benefits

###### *New Zealand benefits*

1. Except as provided in paragraphs 2 and 3, the temporary absence provisions under the legislation of New Zealand shall apply to a person who is receiving a New Zealand benefit under this Agreement.

2. A person who is in receipt of New Zealand Superannuation and who is present in Australia but not an Australian resident, shall be eligible to continue to receive that benefit for up to 26 weeks:
  - (a) where that person is temporarily absent from New Zealand for up to 26 weeks; or
  - (b) where that person is temporarily absent from New Zealand for over 26 weeks and in the opinion of the New Zealand Competent Authority that person has sufficient reason for remaining outside New Zealand for more than 26 weeks.
3. A person who is in receipt of an invalid's benefit, a widow's benefit or a domestic purposes benefit and who is present in Australia but not an Australian resident, shall be eligible to continue to receive that benefit for up to 4 weeks during a temporary absence from New Zealand.

*Australian benefits in New Zealand*
4. A person who, by virtue of this Agreement or otherwise, is in receipt of an age pension and who is present but not ordinarily resident in New Zealand, shall be eligible to continue to receive that benefit for up to 26 weeks during a temporary absence from Australia.
5. A person who, by virtue of this Agreement or otherwise, is in receipt of a disability support pension, a wife pension, a widow B pension or a sole parent pension and who is present but not ordinarily resident in New Zealand, shall be eligible to continue to receive that benefit for up to 4 weeks during a temporary absence from Australia.
6. A person who, by virtue of this Agreement or otherwise, is in receipt of a partner or parenting allowance and who is present but not ordinarily resident in New Zealand, shall be eligible to continue to receive that benefit during a temporary absence from Australia for the period allowed under the legislation of Australia, except where the partner of that person is in receipt of a disability support pension in which case the person shall be eligible to receive his or her benefit for up to 4 weeks during a temporary absence from Australia.

*Australian benefits in a Third Country*

7. A person who, by virtue of this Agreement, is in receipt of an age pension and who is not present or ordinarily resident in New Zealand shall be eligible to continue to receive that benefit for up to 26 weeks during a temporary absence from Australia.
8. A person who, by virtue of this Agreement, is in receipt of a disability support pension, a wife pension, a widow B pension, or a sole parent pension who is not present or ordinarily resident in New Zealand shall be eligible to continue to receive that benefit for up to 4 weeks during a temporary absence from Australia.
9. A person who, by virtue of this Agreement, is in receipt of a partner or parenting allowance who is not present or ordinarily resident in New Zealand shall be eligible to continue to receive that benefit during a temporary absence from Australia for the period allowed under the legislation of Australia, except where the partner of that person is in receipt of a disability support pension in which case the person shall be eligible to receive his or her benefit for up to 4 weeks during a temporary absence from Australia.

*Dual Payments*

10. A person who is in New Zealand shall not be eligible for any pension, benefit or allowance paid under the social security laws of Australia where that person would otherwise be eligible for a New Zealand benefit under this Agreement or any payment (other than an emergency benefit, a special benefit or a benefit payable in respect of specified costs) under the social security laws of New Zealand.
11. A person who is in Australia shall not be eligible for any payment made under the social security laws of New Zealand where that person is eligible for an Australian benefit under this Agreement or any payment made under the social security laws of Australia.”

Article V

1. Subparagraph (e) of paragraph 1 of Article 11 of the Agreement shall be deleted and substituted by the following:

“(e) is an Australian resident or is in receipt of a benefit by virtue of Article 8 or Article 8A; and”

2. Subparagraph (e) of paragraph 2 of Article 11 of the Agreement shall be deleted and substituted by the following:

“(e) is ordinarily resident in New Zealand or is in receipt of a benefit by virtue of Article 7 or Article 8A; and”

3. Paragraph 5 of Article 11 of the Agreement shall be deleted and substituted by the following:

- “5. Neither Party shall be required to reimburse the other Party for a benefit paid to a person who is outside the territory of the Party paying the benefit except:

- (a) during a period of absence as provided in Article 8A; and
- (b) in the case of a benefit which is not paid by virtue of this Agreement and is not paid into the territory of either Party, for a period up to:
  - (i) 26 weeks for age pension and New Zealand superannuation;
  - (ii) 13 weeks for partner and parenting allowance payable to the partner of a person in receipt of an age pension; and
  - (iii) 4 weeks for all other benefits.”

#### Article VI

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

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

DONE in duplicate at Sydney this seventh day of September 1995.

FOR THE GOVERNMENT OF  
AUSTRALIA:

PETER BALDWIN

FOR THE GOVERNMENT  
OF NEW ZEALAND:

GRAHAM FORTUNE

**Part D**

**Notes dated 2 July 1998 between the Government of Australia and the Government of New Zealand agreeing that Article 15 of the Agreement is to be deleted.**

No. Legal 98/290

The Department of Foreign Affairs and Trade presents its compliments to the New Zealand High Commission and has the honour to refer to the Agreement between the Government of Australia and the Government of New Zealand on Social Security, signed at Wellington on 19 July 1994, as amended by the First and Second Protocols to the Agreement between the Government of Australia and the Government of New Zealand on Social Security of 7 September 1995 (“the Agreement”) and to recent discussions between the Department of Social Security of Australia and the Department of Social Welfare of New Zealand concerning the need to amend the Agreement, so as to remove the provisions relating to benefits for the unemployed.

The Department of Foreign Affairs and Trade now has the honour to propose the following amendment to the Agreement:

Article 15 of the Agreement shall be deleted.

If the foregoing proposal is acceptable to the Government of New Zealand, the Department of Foreign Affairs and Trade has the honour to propose that this Note and the New Zealand High Commission’s reply to that effect, shall constitute an Agreement between the Government of Australia and the Government of New Zealand which shall enter into force on the first day of September 1998 provided that prior to that date the Government of Australia and the Government of New Zealand have exchanged further notes through the diplomatic channel notifying each other that all other matters as are necessary to give effect to this Agreement have been finalised or if that notification has not been completed prior to 1 September 1998, on the first day of the second month after that notification has been completed.

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  
2 July 1998

A/NZ/2/4/2

The New Zealand High Commission presents its compliments to the Department of Foreign Affairs and Trade and has the honour to refer to the Department's Note No Legal 98/290 of 2 July which reads as follows:

The Department of Foreign Affairs and Trade presents its compliments to the New Zealand High Commission and has the honour to refer to the Agreement between the Government of Australia and the Government of New Zealand on Social Security, signed at Wellington on 19 July 1994, as amended by the First and Second Protocols to the Agreement between the Government of Australia and the Government of New Zealand on Social Security of 7 September 1995 ("the Agreement") and to recent discussions between the Department of Social Security of Australia and the Department of Social Welfare of New Zealand concerning the need to amend the Agreement, so as to remove the provisions relating to benefits for the unemployed.

The Department of Foreign Affairs and Trade now has the honour to propose the following amendment to the Agreement:

Article 15 of the Agreement shall be deleted.

If the foregoing proposal is acceptable to the Government of New Zealand, the Department of Foreign Affairs and Trade has the honour to propose that this Note and the New Zealand High Commission's reply to that effect, shall constitute an Agreement between the Government of Australia and the Government of Zealand which shall enter into force on the first day of September 1998 provided that prior to that date the Government of Australia and the Government of New Zealand have exchanged further notes through the diplomatic channel notifying each other that all other matters as are necessary to give effect to this Agreement have been finalised or if that notification has not been completed prior to 1 September 1998, on the first day of the second month after that notification has been completed.

The New Zealand High Commission has further the honour to confirm that the above is acceptable to the Government of New Zealand and that the Department's Note and this reply shall constitute an Agreement Between the Government of New Zealand and the Government of Australia which shall

**Schedule 4** Agreement Between the Government of Australia and the Government of New Zealand on Social Security

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enter into force on the first day of September 1998 provided that prior to that date the Government of New Zealand and the Government of Australia have exchanged further notes through the diplomatic channel notifying each other that all other matters as are necessary to give effect to this Agreement have been finalised or that if notification has not been completed prior to 1 September 1998, on the first day of the second month after that notification has been completed.

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

New Zealand High Commission  
CANBERRA  
2 July 1998



## **Schedule 5—Reciprocal Agreement on Social Security Between the Government of Australia and the Government of Canada**

Section 1208

### **PART A**

The Government of Australia and the Government of Canada,  
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**

#### **ARTICLE 1**

##### **Interpretation**

1. In this Agreement:

***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.

***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 10 as a Canadian creditable period.

***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 Canada, the Minister of National Health and Welfare.

**Government of Canada** means the Government in its capacity as representative of Her Majesty the Queen in right of Canada and represented by the Minister of National Health and Welfare.

**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 social security laws 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.

**social security laws** means:

- (i) in relation to Australia, the Social Security Act 1947 as amended, not including amendments effected by laws made for the purpose of giving effect to an agreement on social security; and
- (ii) in relation to Canada, the laws specified in subparagraph 1(b) of Article 2;

**widow** means, in relation to Australia:

- (i) a de jure widow; or
- (ii) a woman who, for not less than 3 years immediately prior to the death of a man, lived with him on a permanent basis as his de facto spouse and was wholly or mainly maintained by him,

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 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 paragraphs 2 and 3, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:
  - (a) in relation to Australia, the Social Security Act 1947 to the extent that the Act provides for and applies to:
    - (i) age pensions;
    - (ii) invalid pensions;
    - (iii) wives' pensions;
    - (iv) carers' pensions; and
    - (v) pensions payable to widows; 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 prior to the commencement of those laws.

## 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 under the Canada Pension Plan

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.

**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 wife's pension or carer's pension who has never been an Australian resident.

**ARTICLE 6**

**Totalisation in relation to Australian Benefits**

1. Where a person has been an Australian resident for a period that is:
  - (a) less than the period as an Australian resident required to qualify him or her under the legislation of Australia for a benefit; and

- (b) equal to or greater than the minimum period identified in accordance with paragraph 6 for that person,  
but has accumulated both a period of residence in Australia and a Canadian creditable period which, when added together, are equal to or greater than the minimum period required for qualification for that benefit by the legislation of Australia, that Canadian creditable period shall be deemed, for the purposes of a claim for that benefit, to be a period in which that person was an Australian resident.
2. In the case of a claim by a person for an invalid pension or pension payable to a widow, 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 widow, that person shall, subject to Article 9, be deemed to have accumulated a Canadian creditable period for any period for which her spouse accumulated a creditable period under the Canada Pension Plan but any period during which the person and her spouse 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 residence in Australia 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 of residence in Australia which a person must have accumulated before paragraph 1 applies shall be as follows:
- (a) for an Australian benefit other than an invalid pension, the minimum period required shall be one year of which at least 6 months must be continuous; and
  - (b) for an invalid pension, the minimum period required shall be 2 years of which at least 6 months must be continuous.

#### ARTICLE 7

##### Australian Pro-Rata Benefits

1. 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 computation of his or her income the guaranteed income supplement under the Old Age Security Act and the portion of the spouse's allowance under that Act equivalent to the guaranteed income supplement and other Canadian federal, provincial or territorial payments of a similar character as mutually determined from time to time in letters exchanged between the Ministers respectively administering the legislation of Australia and Canada; and
  - (b) by assessing as income to that person only a proportion of any other benefit received by that person under the legislation of Canada calculated by multiplying the number of whole months, plus one, accumulated by that person in a period of residence in Australia, but not exceeding 300, by the amount of that benefit and dividing that product by 300.
2. 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 according to the legislation of Australia but, subject to paragraph 5, disregarding in the computation of his or her income any Canadian benefit which that person is entitled to

receive, and deducting the amount of that Canadian benefit from the rate of Australian benefit which would otherwise be payable to that person.

3. Where the rate of a benefit calculated in accordance with paragraph 2 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.
4. For the purposes of paragraph 3, a comparison of the rates of a benefit determined in accordance with paragraphs 1 and 2 shall be made as at:
  - (a) the date of the first pension pay-day occurring after the date on which the claim for the benefit was lodged; and
  - (b) each anniversary of that pension pay-day for so long as the person concerned is entitled to the benefit, using, in that comparison, the number of months in the period of residence in Australia accumulated by the person at the date as at which the comparison is made.
5. For the purposes of paragraph 2, where one or other, or both, of a person and his or her spouse are entitled to receive a Canadian benefit, the total of the Canadian benefits payable to that person and his or her spouse shall be apportioned equally between them and disregarded in the computation 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.
6. An Australian benefit that is payable only by virtue of this Agreement to a person who:
  - (a) was an Australian resident on 8 May 1985; and
  - (b) commences to receive that benefit before 1 January 1996shall be paid, during any absence of that person from Australia that commences before 1 January 1996, at a rate calculated in accordance with paragraphs 2 and 3.
7. As soon as practicable after an exchange of letters in which Canadian federal, provincial or territorial payments are mutually determined for the purposes of subparagraph 1 (a), the Minister

administering the legislation of Australia shall cause to be published in the Commonwealth of Australia Gazette a notice specifying those Canadian payments.

ARTICLE 8

Wives' Pensions and Carers' Pensions

For the purposes of this Agreement, a person who receives an Australian wife's pension or carer's pension due to the fact that the spouse of that person receives, by virtue of this Agreement, an Australian benefit shall be deemed to receive that pension by virtue of this Agreement.

ARTICLE 9

Pensions Payable to Widows

Where, under the legislation of Australia, a widow lodges a claim for a pension payable to a widow, matters which concern her former spouse and affect that claim shall be considered for the purposes of that claim by reference only to her last-deceased spouse who was her husband or was a man in respect of whom she satisfies the conditions specified in subparagraph (ii) of the definition of *widow* in Article 1.

PART III

PROVISIONS RELATING TO CANADIAN BENEFITS

ARTICLE 10

Totalising of Periods for Purposes of the Legislation of Canada

1. Subject to paragraph 3, if a person is not entitled to a benefit on the basis of his or her Canadian creditable periods, eligibility 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 residence in Australia 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 residence in Australia 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 residence in Australia coincide, the period of coincidence shall be taken into account once only as a Canadian creditable period.

#### ARTICLE 11

##### Benefits under the Old Age Security Act

1. (a) If a person is entitled to payment of a pension in Canada under the Old Age Security Act without recourse to the provisions of this Agreement, but has not accumulated sufficient periods of residence in Canada to qualify for payment of the pension abroad under that Act, a partial pension shall be paid to that person outside Canada if the Canadian creditable period accumulated under the Old Age Security Act and period of residence in Australia, when totalised as provided in Article 10, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for payment of a pension abroad.  
  
(b) The amount of the pension payable shall, in this case, be calculated under the provisions of the Old Age Security Act governing the payment of a partial pension, exclusively on the basis of the periods creditable under that Act.
2. (a) If a person is not entitled to a pension or spouse's allowance under the Old Age Security Act solely on the basis of periods of residence in Canada, a partial pension or a spouse's allowance shall be paid to that person if the Canadian creditable period accumulated under that Act and period of residence in Australia, when totalised as provided in Article 10, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for payment of a pension or a spouse's allowance.  
  
(b) The amount of the pension or the spouse's allowance payable shall, in this case, be calculated under the provisions of the Old Age Security Act governing the payment of a partial pension or a spouse's allowance, exclusively on the basis of the periods creditable under that Act.

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 residence in Australia, when totalised as provided in Article 10, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for a payment of a pension abroad;
  - (b) a spouse's allowance shall not be payable by virtue of this Agreement to a person who has not accumulated a Canadian creditable period of at least one year under the Old Age Security Act; and
  - (c) a spouse's allowance and a guaranteed income supplement shall be paid outside Canada only to the extent permitted by the Old Age Security Act.

#### ARTICLE 12

##### Benefits under the Canada Pension Plan

1. If a person is not entitled to a disability pension, disabled contributor's child's benefit, survivor's pension, orphan's pension or death benefit solely on the basis of the periods creditable under the Canada Pension Plan, but is entitled to that benefit through the totalising of periods as provided in Article 10, the competent authority 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 Planby
  - (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 entitlement to that benefit,  
but in no case shall that fraction exceed the value of one.

PART IV

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 13

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 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 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, or administratively for the purposes of, 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 Canadian creditable period; and
  - (b) any event which is relevant to that eligibility or entitlement shall, subject to this Agreement, be taken into account to the extent that those periods or those events are applicable in regard to that person and whether they were accumulated or occurred before or after the date on which this Agreement enters into force.
2. 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.

3. 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 this Agreement.
4. 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 authority 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 authority 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 authority 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.
5. In paragraph 4, **benefit** means, in relation to Australia, a pension, benefit or allowance that is payable under the social security laws of Australia.

#### ARTICLE 15

##### Payment of Benefits

1. The payment outside Australia of an Australian benefit payable by virtue of this Agreement shall not be restricted by those provisions of the social security laws of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.
2. A carer's pension as defined in this Agreement, whether payable by virtue of this Agreement or otherwise, shall be paid within Australia and Canada.

3. A benefit payable by virtue of this Agreement shall be paid without deduction for administrative fees and charges.

ARTICLE 16

Exchange of Information and Mutual Assistance

1. The competent authorities shall:
  - (a) notify each other of laws that amend, supplement or replace the social security laws of their respective Parties promptly after the first-mentioned laws are made;
  - (b) 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 17.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the competent authorities for the reimbursement of certain types of expenses.
3. Any information about a person which is transmitted in accordance with this Agreement to a competent authority 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 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 17**

**Administrative Arrangements**

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

**ARTICLE 18**

**Language of Communication**

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

**ARTICLE 19**

**Understandings with a Province of Canada**

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.

**ARTICLE 20**

**Resolution of Difficulties**

1. The competent authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
2. The Parties shall consult promptly at the request of either concerning matters which have not been resolved by the competent authorities in accordance with paragraph 1.
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 21

##### 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 22

##### Entry into Force and Termination

1. 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.
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 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 by virtue of this Agreement:
  - (a) at the date of termination, are in receipt of benefits; or

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

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

DONE in two copies at Canberra this 4th day of July 1988 in the English and French languages, each text being equally authoritative.

BEN HUMPHREYS  
FOR THE GOVERNMENT  
OF AUSTRALIA

DON MAZANKOWSKI  
FOR THE GOVERNMENT  
OF CANADA

## PART B

### PROTOCOL AMENDING THE RECIPROCAL AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF CANADA SIGNED AT CANBERRA ON THE 4TH DAY OF JULY 1988.

The Government of Australia and the Government of Canada Desiring to amend the Reciprocal Agreement on Social Security signed by them at Canberra on the 4th day of July 1988 (in this Protocol referred to as *the Agreement*)

Have agreed as follows:

#### ARTICLE 1

Article 1 of the Agreement is amended by omitting from paragraph 1 the definition of *widow* and substituting the following definition of *widowed person*:

“*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 spouse; or
- (ii) is a class B widow because of the death of her legal husband or because she is a dependent female,

but does not include a person who has a new spouse.”



ARTICLE 2

Article 2 of the Agreement is amended by omitting from subparagraph 1(a)(v) the word “widows” and substituting the words “widowed persons”.

ARTICLE 3

Article 6 of the Agreement is amended by:

- (a) omitting from paragraphs 2 and 3 the word “widow” where appearing and substituting the words “widowed person”;
- (b) omitting from paragraph 3 the word “her” where first appearing and substituting the words “the person’s”;
- (c) omitting from paragraph 3 the word “her” where second appearing and substituting the word “the”; and
- (d) omitting paragraph 6 and substituting the following paragraph:

“6. The minimum period to be taken into account for the purposes of subparagraph 1(b) shall be as follows:

- (a) for a person who is residing outside Australia;
  - (i) in regard to a benefit other than an invalid pension, a minimum period of residence in Australia of one year of which at least 6 months must be continuous; and
  - (ii) in regard to an invalid pension, a minimum period of residence in Australia of 2 years of which at least 6 months must be continuous; and
- (b) for an Australian resident;
  - (i) in regard to a benefit other than an invalid pension, a minimum period as an Australian resident of one year of which at least 6 months must be continuous; and
  - (ii) in regard to an invalid pension, a minimum period as an Australian resident of 2 years of which at least 6 months must be continuous.”

ARTICLE 4

Article 9 of the Agreement is deleted and the following Article is substituted:

“ARTICLE 9

Pensions Payable to Widowed Persons

Where, under the legislation of Australia, a person lodges a claim for a pension payable to a widowed person, matters which concern that person’s former spouse and affect that claim shall be considered for the purposes of that claim by reference only to the last-deceased spouse of that person.”

ARTICLE 5

Article 15 of the Agreement is amended by:

- (a) omitting paragraph 2;
- (b) renumbering paragraph 3 as paragraph 4; and
- (c) inserting the following new paragraphs 2 and 3:
  - “2. The benefits payable by virtue of this Agreement and listed in this paragraph shall be payable within and outside Australia and Canada:
    - (a) for Australia:
      - (i) age pension;
      - (ii) invalid pension;
      - (iii) wife’s pension;
      - (iv) a pension payable to a widowed person who became a widowed person while both the person and the spouse were Australian residents;
      - (v) Class “B” widow’s pension; and
    - (b) for Canada:
      - subject to subparagraph 3(c) of Article 11, the benefits referred to in the legislation of Canada.
  - 3. A pension payable to a widowed person or a carer’s pension, whether payable by virtue of this Agreement or otherwise, shall be paid in Australia and Canada with no limitation by time.”

ARTICLE 6

This Protocol, which shall form an integral part of the 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 Protocol have been

finalized and, thereupon, this Protocol shall have effect as from the date on which the Agreement entered into force.

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

DONE in two copies at Ottawa, this 11 day of October 1990, in the English and French languages, each text being equally authoritative.

J. HUMPHREYS  
FOR THE GOVERNMENT  
OF AUSTRALIA

PERRIN BEATTY  
FOR THE GOVERNMENT  
OF CANADA

## Schedule 6—Agreement on Social Security Between Australia and Spain

Section 1208

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;

- (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 recognized 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:
  - (a) 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 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:  
BRIAN HOWE

FOR SPAIN:  
JOSE LUIS PARDOS

## **Schedule 7—Agreement Between Australia and Malta on Social Security**

Section 1208

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 1

#### 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:
  - (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:

$$\frac{\text{P.I.} \times 2 \times \left[ \frac{\text{T1}}{\text{Y}} + \frac{\text{T2}}{10} \right] \times \left[ \frac{\text{C1}}{\text{T1}} + \frac{\text{C2}}{\text{T2}} \right]}{600}$$

but that pension shall not be payable if the formula

$$\frac{\left[ \frac{\text{T1}}{\text{Y}} + \frac{\text{T2}}{10} \right]}{2}$$

gives a result that is less than 15

where:

- P.I. = the claimant's pensionable income or re-assessed pensionable income (as the case may be) according to the legislation of Malta;
- C1 = the number of reckonable contributions (not exceeding 1000) during any period prior to the last 10 calendar years immediately before retirement;
- C2 = the number of reckonable contributions (not exceeding 500) within the last 10 calendar years immediately before retirement;
- T1 = the number of totalised contributions (not exceeding 1000) aggregated under Article 9 during any period prior to the last 10 calendar years immediately before retirement;
- T2 = the number of totalised contributions (not exceeding 500) aggregated under Article 9 within the last 10 calendar years immediately before retirement; and
- Y = the number of reckonable years (not exceeding 20) prior to the last 10 calendar years immediately before retirement.

- (c) in the case of a pension in respect of invalidity, by multiplying the applicable rate of that pension attributable to the claimant by the number of reckonable contributions (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 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

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## Schedule 8—Agreement Between Australia and the Kingdom of the Netherlands on Social Security

Section 1208

The Government of Australia and the Government of The  
Kingdom of The Netherlands,  
Wishing to strengthen the existing friendly relations between their  
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, 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.

***Competent Authority*** means, in relation to Australia: the Secretary to the Department of Social Security, and, in relation to The Netherlands: the Minister for Social Affairs and Employment.

***Competent Institution*** means, in relation to Australia: the Competent Authority for Australia, and in relation to The Netherlands: the Insurance 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 Article 2 in relation to Australia; and, in relation to The Netherlands, the laws, ordinances and administrative regulations

relating to the systems and branches of social security specified in Article 2 in relation to The Netherlands.

***period of insurance*** means a period defined as such in the legislation of The Netherlands.

***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 9 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 Netherlands, the territory of the Kingdom in Europe.

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: the Social Security Act 1947, in so far as the Act provides for, applies to or affects the following benefits:
    - (i) age pensions;
    - (ii) wives' pensions for women who are the wives of persons receiving age pension;
  - (b) in relation to The Netherlands, its legislation on:
    - (i) general old age insurance;and for the application of Article 6 also its legislation on:
    - (ii) sickness insurance;
    - (iii) unemployment insurance;
    - (iv) children's allowances;

- (v) invalidity insurance;
  - (vi) general survivor's insurance.
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 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 or to new branches or systems of social security only if the two Parties so agree in a Protocol to this Agreement.
  4. 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.

#### 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. Subject to the domestic laws of a Party the citizens of each of the Parties shall be treated equally in the application of the social security laws of Australia and of The Netherlands.
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 which arise by virtue of this Agreement.

Article 5

Payment of benefits abroad

1. Except where otherwise provided in this Agreement and subject to the legislation of the Parties, benefits may not be reduced, modified, suspended or withdrawn on account of the recipient residing in the territory of the other Party.
2. Where qualification for Australian wives' pensions for women, who are the wives of persons receiving age pensions, are subject to limitations as to time, then reference to Australia in those limitations shall be read also as reference to the territory of The Netherlands.

Article 6

Secondment

1. Where a person, who is subject to the legislation of The Netherlands, in the service of an employer having its place of business in the territory of The Netherlands is sent from that territory by that employer to work in the territory of Australia for a period not expected to exceed 5 years, the person may remain subject to the legislation of The Netherlands as if he were employed in the territory of The Netherlands.
2. If the duration of the work is expected to extend beyond the afore-mentioned duration a person who is subject to the legislation of The Netherlands in the service of an employer having his place of business in the territory of The Netherlands, is sent from that territory by that employer to work in the territory of Australia, the person may, if justified by special reasons, remain subject to the legislation of The Netherlands as if he were employed in the territory of the Netherlands.
3. If the actual duration of work of the person described in paragraph 1 exceeds the expected period of work owing to unforeseeable circumstances that person may remain subject to the legislation of The Netherlands as if he were employed in the territory of The Netherlands.
4. 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 Netherlands.

5. According to the provisions of this article the Netherlands' legislation shall be applicable if the employer or employee has applied for a certificate of secondment within three months after the first day of secondment or as expressed in paragraph 3 before the end of the expected period of secondment and this certificate has been issued to the person concerned.

## PART II.

### PROVISIONS RELATING TO AUSTRALIAN BENEFITS

#### Article 7

##### Residence or Presence in The Netherlands 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 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.
2. Paragraph 1 shall not apply to a claimant for a wife's pension who has never been an Australian resident.

#### Article 8

##### Spouse-related Australian Benefits

1. For the purposes of this Agreement, a person who receives a wife's pension under the Social Security Act 1947 as amended from time to time due to the fact that the spouse of that person receives by virtue of this Agreement an Australian benefit, shall be deemed to receive that wife's pension by virtue of this Agreement.

2. For the purposes of this Agreement, a person in Australia who receives a carer's pension under the Social Security Act 1947 as amended from time to time because that person is caring for someone who receives an Australian benefit by virtue of this Agreement, shall be deemed to receive that carer's pension by virtue of this Agreement.

Article 9

Totalisation for Australia

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:
  - (a) a period as an Australian resident that is less than the period required to qualify 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 period identified in 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 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 10

##### 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.
2. When assessing the income of a person for the purposes of calculating the rate of a benefit pursuant to paragraph 1:
  - (a) any payment according to the Algemene Bijstandswet, to that person under the legislation of The Netherlands shall be disregarded, and
  - (b) only the proportion of any other Netherlands' benefit described as follows 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 paragraph 2(b) may be expressed as

$$A = \frac{Q}{300} \left[ R - \left( \frac{NP * Q/300 + I - F}{2} \right) \right]$$

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' old age benefit excluding AOW toeslag;
- I = income within the meaning of Australian legislation excluding NP; and
- F = free area under the Australian income test.

3. A person who receives an Australian benefit in the territory of The Netherlands under the legislation of Australia shall be entitled to receive the concessional assessment of income set out in paragraph 2(a).
4. A person who receives a proportionalised Australian benefit in the territory of The Netherlands under the legislation of Australia shall be entitled to receive the concessional assessment of income set out in paragraph 2.
5. Subject to the provisions of paragraph 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;
  - (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).
6. Where a married person is, or both that person and his or her spouse are, in receipt of a Netherlands' benefit or benefits, each of them shall be deemed, for the purpose of paragraph 5 and for the Social Security Act 1947 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.

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 spouse for a payment under the legislation of Australia that person shall be deemed to receive that benefit.
8. The reference in paragraph 7 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 under the Social Security Act 1947 as amended from time to time whether by virtue of this Agreement or otherwise.

### PART III.

#### PROVISIONS RELATING TO THE NETHERLANDS BENEFITS

##### Article 11

##### 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 resided in the territory of The Netherlands after reaching the age of fifteen or during which, while residing in another country the person was gainfully employed in 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 Netherlands.

**PART IV.**

**COMMON PROVISIONS**

**Article 12**

**Common Provisions for the Calculation of Benefits**

1. For the purposes of calculating Australian benefits under paragraph 2 of Article 10, the AOW-toeslag shall not be taken into account if the beneficiary resides in the territory of The Netherlands.
2. For the purposes of calculating the AOW-toeslag under Article 11, Australian benefits for the spouse of the beneficiary shall not be taken into account if the beneficiary resides in the territory of Australia.

**PART V.**

**MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

**Article 13**

**Lodgement of Documents**

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

2. A claim for a benefit under the legislation of one Party shall be deemed to be a claim for the corresponding benefit under the legislation of the other Party, provided that the applicant:
  - (a) requests that it be considered an application under the legislation of the other Party, or
  - (b) provides information at the time of application indicating that periods of residence or periods of insurance have been completed under the legislation of the other Party and the claim is received by the Competent Institution of the other Party within six months from the date of lodgement with the first Party.
3. In any case to which paragraph 1 or 2 applies, the Competent Authority, Competent Institution or Tribunal to which the claim, notice or appeal has been submitted shall transmit it without delay to the Competent Authority, Competent Institution or Tribunal of the other Party.
4. 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.

#### Article 14

##### 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 benefitthat 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. For the purposes of the Social Security Act 1947, where:
  - (a) a benefit is paid or payable by a Party to a person in respect of a past period and that past period occurred after the entry into force of the 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 5 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 or 4 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 15

##### 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 leaves Australia within 12 months of the date of that return.
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 insurance 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 insurance 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.

Article 16

Exchange of Information and Mutual Assistance

1. The Competent Authorities and 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 17.
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. 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 17

##### 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 18

##### 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 VI.

##### TRANSITIONAL AND FINAL PROVISIONS

#### Article 19

##### 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 in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.
3. 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 the Agreement.
4. Subject 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 20

##### 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. This Agreement shall enter into force on the first day of the third month following the date of the last notification.
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 notice of termination of this Agreement.
3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who:
  - (a) at the date of termination, are in receipt of benefits, or

(b) prior to 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 The Hague this 4th day of January 1991, in  
the English language.

FOR THE GOVERNMENT  
OF AUSTRALIA

GRAHAM RICHARDSON

FOR THE GOVERNMENT  
OF THE KINGDOM OF THE  
NETHERLANDS

ELSKE TER VELD

## Schedule 9—Agreement Between Australia and Ireland on Social Security

Section 1208

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 personand 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:  
GRAHAM RICHARDSON

FOR IRELAND:  
MICHAEL WOODS

## **Schedule 10—Agreement Between the Government of Australia and the Government of the Republic of Portugal on Social Security**

Section 1208

The Government of Australia and the Government of the Republic  
of Portugal,

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's pension** means a carer's pension payable to a spouse under the legislation of Australia;
  - (c) **Competent Authority** means:
    - in relation to Australia: the Secretary to the Department of Social Security; 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 Competent Authority for Australia; and,

in relation to Portugal: the Institution responsible under the legislation of Portugal for dealing with a claim for a Portuguese benefit;

(e) **Institution** means:

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

in relation to Portugal: the body responsible for the implementation of the legislation of Portugal;

(f) **legislation** means, in relation to a Party, the laws specified in Article 2;

(g) **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 11 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 13 as a Portuguese insurance period;

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

(j) **widow** means:

in relation to Australia: a de jure widow or a dependent female; and,

in relation to Portugal: a de jure widow or an unmarried or legally separated woman covered by paragraph 1 of Article 2020 of the Civil Law Code;

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



meanings, 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 the following benefits:
    - age pensions;
    - invalid pensions;
    - wives' pensions;
    - carers' pensions;
    - benefits payable to widows;
    - unemployment benefits; and
    - sickness benefits; and
  - (b) in relation to Portugal:
    - (i) the legislation relating to the General Scheme and the Special Schemes (including the Voluntary Social Insurance Scheme and excluding provisions for Civil Servants or persons treated as such) of the Social Security System in respect of the following benefits:
      - old age pensions;
      - invalid pensions;
      - survivors' pensions and death grant;
      - sickness and maternity benefits;
      - unemployment benefits;
      - funeral grant; and
      - family allowance for pensioners (including pensioners under the legislation relating to work injury and occupational diseases);
    - (ii) the legislation relating to work injury and occupational diseases pensions; and
    - (iii) the legislation relating to the non-contributory scheme in respect of old age, invalid and survivors' pensions.

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 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 Portugal;

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

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

##### 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

##### Payment 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 benefits and sickness benefits under the legislation of Australia shall not be paid outside the territory of Australia and sickness and maternity benefits and unemployment benefits under the legislation of Portugal and Portuguese pensions specified in Article 2(1)(b)(iii) shall not be paid outside the territory of Portugal.

## PART II

### 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 resident or employed 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 Coverage

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

PART III

PROVISIONS RELATING TO BENEFITS

SECTION 1

AUSTRALIAN BENEFITS

ARTICLE 9

Residence or Presence in Portugal 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 Portugal 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 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 wife's pension or carer's pension who has never been an Australian resident.

ARTICLE 10

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 11

Totalisation for Australia

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

- (a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the legislation of Australia for a benefit; and
  - (b) a period of residence in Australia equal to or greater than the period identified in accordance with paragraph 4 for that person;
- and a Portuguese insurance period, then for the purposes of a claim for that Australian benefit, that Portuguese insurance 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. 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 residence in Australia (as defined in Article 1) to be taken into account for the purposes of paragraph 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 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 period of residence in Australia shall be required.

ARTICLE 12

Calculation of Australian Benefits

1. Subject to paragraphs 2 and 3, where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside Australia, the rate of that benefit shall be determined according to 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 Article 2(1)(b)(i) or (ii) 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. 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 Article 2(1)(b)(iii); 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.
4. Subject to paragraph 5, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:
  - (a) calculating that person's income according to the legislation of Australia but disregarding in that calculation 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).
5. Where a married person is, or both that person and his or her spouse are, in receipt of a Portuguese 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.

## SECTION 2

### PORTUGUESE BENEFITS

#### SUBSECTION 1

#### OLD-AGE, INVALID AND SURVIVORS' PENSIONS

#### ARTICLE 13

##### Totalisation for Portugal

1. Where this Agreement applies and there is a Portuguese insurance period that is:
- (a) less than the period necessary to give a claimant entitlement to the benefit claimed under the legislation of Portugal; and

- (b) equal to or greater than the period mentioned in paragraph 3 for that benefit;
- then any period of residence in Australia by the contributor to whom that Portuguese insurance period was credited shall be deemed to be a Portuguese insurance period.
2. For the purposes of this Article, where a Portuguese insurance period and period of residence in Australia coincide, the period of coincidence shall be taken into account once only as a Portuguese insurance period.
  3. The Portuguese insurance period to be taken into consideration for the purposes of paragraph 1(b) shall be 12 months.
  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 to the age pension age for a woman for the purposes of claiming an old age pension under the legislation of Portugal.

#### ARTICLE 14

##### Rules for the Granting of Portuguese Pensions

1. Subject to paragraph 3, the Portuguese Institution shall determine the rate of Portuguese benefits in accordance with Portuguese legislation and, in relation to old age pension, invalid pension and survivor's 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's pension payable under the legislation of Australia shall not be taken into account.

#### SUBSECTION 2

#### OTHER PORTUGUESE BENEFITS

#### ARTICLE 15

##### 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 residence in Australia shall be deemed as periods accomplished under Portuguese legislation, provided that they do not coincide.

#### ARTICLE 16

##### 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 residence in Australia, during which an occupational activity has been pursued as an employee or Australian unemployment benefit 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 17

##### Family Allowance for Pensioners

Family allowances payable under the legislation of Portugal:

- (a) 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;

- (b) shall not preclude the payment of family allowance under the Social Security Act 1947 of Australia as amended from time to time;

and shall for the purposes of reciprocity in relation to this Agreement be regarded as the Portuguese benefit equivalent to those Australian benefits described as additional pension and mothers' and guardians' allowances for children.

#### ARTICLE 18

##### 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 that Party.
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 IV

##### MISCELLANEOUS PROVISIONS

#### ARTICLE 19

##### 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 23 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. 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 legislations.

#### ARTICLE 20

##### 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 claim is made for a benefit payable by one of the Parties by virtue of this Agreement; and
  - (b) there are no reasonable grounds for the claimant not to claim a benefit under the legislation of the other Party, whether by virtue of this Agreement or otherwise;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. The provisions of paragraph 3 shall in no way affect the rights of a person under the legislation of Portugal to continue to acquire the right to a benefit under that legislation.
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 arrears of 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 debt described in subparagraph 5(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 5(e).
7. A reference in paragraph 3, 5 or 6 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 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 21

Payment of Benefits

1. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.
2. A 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.
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 22

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 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 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 23.
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 23.
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 3 be construed so as to impose on the Competent Authority or Institution of a Party the obligation:
- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party;  
or
  - (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Party.

6. 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.
7. In this Article the meaning of *legislation* is not confined by any restrictions imposed by Article 2.

#### ARTICLE 23

##### Administrative Arrangements

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

#### ARTICLE 24

##### 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 25

##### 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

#### FINAL PROVISIONS

#### ARTICLE 26

##### Entry Into Force and Termination

1. This Agreement shall enter into force on the first day of the month following the finalisation of 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 LISBON this THIRTIETH day of APRIL, NINETEEN HUNDRED AND NINETY ONE in the English and Portuguese languages, each text being equally authoritative.

FOR THE GOVERNMENT  
OF AUSTRALIA

Graham Richardson

FOR THE GOVERNMENT  
OF THE REPUBLIC OF  
PORTUGAL

Jose Albino da Silva Peneda



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## **Schedule 11—Agreement Between Australia and the Republic of Austria on Social Security**

Section 1208

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.

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**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 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.

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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 personand has accumulated a period of insurance in Austria, then for the purposes of a claim for that Australian benefit, that period of insurance in Austria shall be deemed, only for the purposes of this Article for meeting any period required for qualification for that benefit set out in the legislation of Australia, to be a period in which that person was an Australian resident.
2. For the purposes of paragraph 1, where a person:
  - (a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and
  - (b) has accumulated a period of insurance in Austria in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a),the total of the periods of insurance in Austria shall be deemed to be one continuous period.
3. For all purposes of this Article, where a period by a person as an Australian resident and a period of insurance in Austria coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

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4. The minimum period of residence in Australia to be taken into account for the purposes of paragraph 1 shall be as follows:
    - (a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period shall be twelve months of which at least six months must be continuous; and
    - (b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum.
  5. For the purposes of a claim by a person for a pension payable to a widowed person, that person shall be deemed to have accumulated a period of insurance in Austria for any period for which his or her partner accumulated a period of insurance in Austria but any period during which the person and his or her partner both accumulated a period of insurance in Austria shall be taken into account once only.

**ARTICLE 7**

1. Subject to paragraph 2, where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside the territory of Australia, the rate of that benefit shall be determined according to the legislation of Australia but when assessing the income of that person for the purposes of calculating the rate of the Australian benefit only a proportion of any Austrian benefit which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of Australian working life residence (not exceeding 300) by the amount of that Austrian benefit and dividing that product by 300.
2. A person referred to in paragraph 1 shall only be entitled to receive the concessional assessment of income described in that paragraph for any period during which the rate of that person's Australian benefit is proportionalised under the legislation of Australia.
3. Where an Australian benefit is payable by virtue of this Agreement or otherwise to a person who is in Austria, any compensatory supplement or social assistance and similar means-tested payment paid by Austria to that person shall be disregarded by Australia in computing that person's income for

the purposes of the legislation of Australia or the application of this Agreement.

4. Subject to the provisions of paragraph 5, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:
  - (a) calculating that person's income according to the legislation of Australia but disregarding in that calculation the Austrian benefit received by that person;
  - (b) deducting the amount of the Austrian benefit received by that person from the maximum rate of that Australian benefit; and
  - (c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph (a).
5. Where the rate of a benefit calculated in accordance with paragraph 4 is less than the rate of that benefit which would be payable under paragraphs 1, 2 and 3 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.
6. Where a married person is, or both that person and his or her partner are, in receipt of an Austrian benefit or benefits, each of them shall be deemed, for the purposes of paragraph 4 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.
7. For the purposes of paragraph 5, a comparison of the rates of the benefits shall be made as at:
  - (a) the date of the first pension pay day occurring after the date from which the benefit is payable; and
  - (b) each anniversary of that pension pay day for so long as the person concerned is entitled to the benefit;using, in that comparison, the number of months of the period of Australian working life residence accumulated by the person at the date as at which the comparison is made.



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ARTICLE 8

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

PART III

PROVISIONS CONCERNING AUSTRIAN BENEFITS

ARTICLE 9

If a person has completed periods of insurance in Austria and periods of Australian working life residence, those periods, insofar as they do not overlap, shall be added together for the purpose of qualification for an Austrian benefit.

ARTICLE 10

1. If a person who has completed periods of insurance in Austria and periods of Australian working life residence, or the survivor of such a person, is claiming a benefit, the competent institution for Austria shall determine the amount of the benefit in the following manner:
  - (a) the institution shall determine, in accordance with the Austrian legislation, whether the person concerned has an entitlement to a benefit by adding together the periods as provided in Article 9;
  - (b) if entitlement to a benefit is determined to exist, the institution shall first calculate the theoretical amount of the benefit which would be payable if all the periods completed under the legislation of both Parties had been completed exclusively under the Austrian legislation; in cases where the amount of the benefit is independent of the duration of the period of insurance, this amount shall be taken to be the theoretical amount; and
  - (c) the institution shall then calculate the partial benefit payable on the basis of the amount calculated in accordance with the provisions of subparagraph (b) in proportion to the ratio between the duration of the periods of insurance to be taken into consideration under the Austrian legislation and the total

duration of the periods to be taken into consideration under the legislation of both Parties.

2. Where the periods of insurance to be taken into consideration under the Austrian legislation for the purpose of calculating the amount of a benefit are in aggregate less than twelve months, no benefit under that legislation shall be paid. However, the preceding sentence shall not apply if the entitlement to that benefit has been acquired under the Austrian legislation exclusively on the basis of periods of insurance completed under that legislation.

**ARTICLE 11**

The competent Austrian institution shall apply Articles 9 and 10 according to the following rules:

1. In determining the institution responsible for paying a benefit, only periods of insurance in Austria shall be taken into consideration.
2. Periods of Australian working life residence, during which the person concerned was employed or self-employed, shall be treated as periods of contributions.
3. Articles 9 and 10 shall apply neither to the conditions of entitlement to nor to the payment of the miners' long service allowance under the miners' pension insurance.
4. For the application of paragraph 1 of Article 10, the following shall apply:
  - (a) periods during which the insured person has been entitled to an age pension or invalid pension under the legislation of Australia shall be treated as if they were neutral periods;
  - (b) the basis of assessment shall be determined exclusively on periods of insurance in Austria;
  - (c) the contributions for supplementary insurance as well as the miners' supplementary benefit, the helpless person's allowance and the compensatory supplement shall be disregarded.
5. For the application of subparagraphs 1(b) and (c) of Article 10, overlapping periods under the legislation of the two Parties shall be taken into consideration as if they did not overlap.

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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

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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.

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4. The laws of a Party concerning confidentiality shall apply to any information about an individual which is transmitted in accordance with this Agreement to that Party by the other Party. Such information shall be used only for purposes of applying this Agreement or the legislation of a Party.
  5. The competent authorities of the Parties shall, in order to facilitate the application of this Agreement, particularly for the creation of a simple and fast liaison between the institutions concerned, establish liaison agencies.
  6. The institutions and the competent authority of one Party may not reject claims or other documents submitted to them by reason only of the fact that they are written in an official language of the other Party.
  7. If the competent institution of one Party requires an applicant or beneficiary who lives in the territory of the other Party to undergo a medical examination, such examination shall, at the request of that institution, be arranged or carried out by the institution of the latter Party at its expense.

#### ARTICLE 18

##### Exemption from Taxes and from Authentication

1. Any exemption or reduction provided for in the legislation of one Party for taxes, stamp duty, legal dues or registration fees for certificates or documents which have to be submitted for the application of this legislation shall be extended also to the respective certificates or documents which must be submitted for the application of this Agreement or the legislation of the other Party.
2. Documents and certificates of any kind which must be submitted for the application of this Agreement shall not require authentication.

ARTICLE 19

Resolution of Difficulties

1. Disagreements arising in connection with the application of this Agreement shall, as far as possible, be resolved by mutual agreement between the competent authorities of the Parties.
2. If any such disagreement has not been resolved within a period of six months, either Party may submit the matter to binding arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Parties.

PART V

TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 20

Transitional Provisions

1. This Agreement shall not establish any entitlement to payment of a benefit for a period before its entry into force.
2. In determining entitlement to a benefit under this Agreement, periods of insurance in Austria and periods as an Australian resident completed before the entry into force of this Agreement shall also be taken into consideration.
3. Subject to paragraph 1, this Agreement shall also apply to contingencies which are relevant to an entitlement which occurred before its entry into force, insofar as previously determined entitlements have not been settled by lump-sum payments. If in such cases the claim for a benefit which is payable only by virtue of this Agreement is submitted within one year from the date of entry into force of this Agreement, the benefit shall be determined and paid from that date; otherwise the benefit shall be paid from the date determined under the legislation of each Party.
4. Subject to the legislation of either Party this Agreement shall not result in any reduction in the amount of any benefit to which entitlement was established prior to its entry into force.



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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.

**Schedule 11** Agreement Between Australia and the Republic of Austria on Social Security

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FOR AUSTRALIA:

NEAL BLEWETT

FOR THE REPUBLIC  
OF AUSTRIA:

WALTER HIETSCH.

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## **Schedule 12—Agreement on Social Security Between Australia and the Republic of Cyprus**

Section 1208

Australia and the Republic of Cyprus,  
Wishing to strengthen the existing friendly relations between the  
two countries,  
and  
Resolved to coordinate their social security systems;  
Have agreed as follows:

### PART I

#### GENERAL PROVISIONS

#### ARTICLE 1

##### Definitions

1. In this Agreement, unless the context otherwise requires:
  - (a) **benefit** means in relation to a Party, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable in addition to that benefit, pension or allowance to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;
  - (b) **carer pension** means a carer pension payable to the partner of a person who is in receipt of a disability support pension for the severely disabled or an age pension where that partner is legally married to that person;
  - (c) **Competent Authority** means;  
in relation to Australia:  
the Secretary to the Department of Social Security; and,  
in relation to Cyprus:  
the Minister of Labour and Social Insurance;

- (d) **Competent Institution** means;
    - in relation to Australia:  
the Department of Social Security; and,
    - in relation to Cyprus:  
the Department of Social Insurance Services, Ministry of Labour and Social Insurance;
  - (e) **legislation** means the laws specified in Article 2;
  - (f) **period of Australian working life residence**, in relation to a person, means a period defined as such in the legislation of Australia;
  - (g) **period of insurance** means a period for which contributions have been paid or credited or a period of paid or credited insurable earnings under the legislation of Cyprus;
  - (h) **territory** means;
    - in relation to Australia:  
Australia as defined in the legislation of Australia; and
    - in relation to Cyprus:  
the island of Cyprus;
  - (i) **welfare benefit** means, in relation to Cyprus, any benefit payable under the Public Assistance Law of 1991 and any law to provide a similar means tested benefit from public funds that subsequently amends, supplements or replaces it and any rent allowance payable out of the Fund established under the Rent Control Laws of 1983 and 1991 and any law to provide a similar means-tested rent allowance from public funds that subsequently amends, supplements or replaces them; and
  - (j) **widow** means, in relation to Australia, a de jure widow but does not include a woman who has a partner.
2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the legislation of either Party or, in the event of a conflict of meaning, by whichever of those laws is the more applicable to the circumstances of that person.

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ARTICLE 2

Legislative scope

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



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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.

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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.

FOR AUSTRALIA:  
DAVID SIMMONS

FOR THE REPUBLIC OF CYPRUS:  
I. ARISTIDOU

**Schedule 12** Agreement on Social Security Between Australia and the Republic of Cyprus

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Article 134

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