



Social Security (International Agreements) Act 1999 Amendment Regulations 2007 (No. 1)¹

Select Legislative Instrument 2007 No. 144

I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Social Security (International Agreements) Act 1999*.

Dated 7 June 2007

P. M. JEFFERY
Governor-General

By His Excellency's Command

MAL BROUGH
Minister for Families, Community Services and Indigenous Affairs

1 Name of Regulations

These Regulations are the *Social Security (International Agreements) Act 1999 Amendment Regulations 2007 (No. 1)*.

2 Commencement

These Regulations commence on the day on which the Agreement between the Government of Australia and the Swiss Federal Council on Social Security (being the Agreement of that name done at Canberra on 9 October 2006) enters into force for Australia.

3 Amendment of *Social Security (International Agreements) Act 1999*

Schedule 1 amends the *Social Security (International Agreements) Act 1999*.

Schedule 1 Amendment

(regulation 3)

[1] After Schedule 19

insert

Schedule 20 — Switzerland

Note: See Section 5.

**AGREEMENT BETWEEN AUSTRALIA AND THE SWISS
CONFEDERATION ON SOCIAL SECURITY**

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

2	<i>Social Security (International Agreements) Act 1999 Amendment Regulations 2007 (No. 1)</i>	2007, 144
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PART I
GENERAL PROVISIONS

Article 1
Definitions

1. In this Agreement the following definitions shall apply:
- (a) **“Contracting States”** means the Swiss Confederation and the Government of Australia;
 - (b) **“territory”** means,
 - (i) in relation to Switzerland, the territory of Switzerland;
 - (ii) in relation to Australia, Australia as defined in the legislation of Australia;
 - (c) **“national”** means,
 - (i) in relation to Switzerland, a Swiss national;
 - (ii) in relation to Australia, an Australian citizen;
 - (d) **“legislation”** means,
 - (i) in relation to Switzerland, the laws specified in subparagraph 1(a) of Article 2; and
 - (ii) in relation to Australia, the law specified in subparagraph 1(b)(i) of Article 2 except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the laws specified in subparagraph 1(b)(ii) of Article 2;

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- (e) **“Competent Authority”** means,
- (i) in relation to Switzerland, the Federal Social Insurance Office; and
 - (ii) in relation to Australia, the Secretary of the Department responsible for the application of the legislation in subparagraph 1(b)(i) of Article 2 except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner;
- (f) **“Competent Institution”** means,
- (i) in relation to Switzerland, the institution which has the task of implementing the Swiss legislation; and
 - (ii) in relation to Australia, the institution or agency which has the task of implementing the applicable Australian legislation;
- (g) **“period of Australian working life residence”** means, in relation to a person, the period defined as such under the legislation of Australia but does not include any period deemed pursuant to Article 18 to be a period in which that person was an Australian resident;
- (h) **“insurance periods”** means, in relation to Switzerland, the contribution periods as well as equivalent periods which are determined or recognised as insurance periods under the Swiss legislation;
- (i) **“benefit”** means, in relation to a Contracting State, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable in addition

to that benefit, pension or allowance, but for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;

- (j) **“reside”** means, in relation to Switzerland, stay ordinarily;
 - (k) **“domicile”** means, in relation to Switzerland and within the meaning of the Swiss Civil Code, the place in which a person is staying with the intention of living there permanently;
 - (l) **“refugee”** means a refugee as defined by the Convention on the Status of Refugees of 28 July 1951 and the Protocol of 31 January 1967 to that Convention;
 - (m) **“stateless person”** means a stateless person as defined by the Convention on the Status of Stateless Persons of 28 September 1954;
 - (n) **“family members and survivors”** means, in relation to Switzerland, family members and survivors, whose rights are derived from a national of a Contracting State, from a refugee or from a stateless person;
 - (o) **“widowed person”** means, in relation to Australia, a person who stops being a member of a couple because of the death of the person’s legal husband or wife, but does not include a person who has a partner.
2. Unless the context otherwise requires, any term not defined in this Agreement has the meaning assigned to it in the applicable legislation.

Article 2 Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the following laws and regulations as amended at the date of signature of this Agreement, and to any laws and regulations that subsequently amend, supplement, supersede or replace them:
 - (a) in relation to Switzerland:
 - (i) the Federal Act on old-age and survivors' insurance;
 - (ii) the Federal Act on disability insurance;
 - (b) in relation to Australia:
 - (i) the Acts referred to as "the social security law" in the *Social Security Act 1991*, and any regulations made under any such Act insofar as those Acts or regulations provide for, apply to or affect the following benefits:
 - A. age pension;
 - B. disability support pension for the severely disabled;
 - C. pensions payable to widowed persons;
 - D. double orphan pension; and
 - E. carer payment;
 - (ii) the law concerning the superannuation guarantee, which at the time of signature of this Agreement is contained in the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Regulations*.

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2. Notwithstanding the provisions of subparagraph 1(b), this Agreement shall apply to women who are receiving wife pension at the date this Agreement comes into force and who are the wives of:
 - (a) persons receiving age pension; or
 - (b) persons receiving disability support pension for the severely disabled.
 3. This Agreement shall apply to laws or regulations which extend the existing legislation to other categories of beneficiaries or which involve a new branch of social security only if both Contracting States so agree in a Protocol to this Agreement.
 4. Laws within the meaning of paragraph 1 shall not include treaties or other international agreements on social security that may be concluded between one of the Contracting States and a third State.

Article 3 **Personal Scope**

This Agreement shall apply:

- (a) in relation to Switzerland,
 - (i) to the nationals of the Contracting States as well as to their family members and survivors;
 - (ii) to refugees, to stateless persons and to their family members and survivors who reside in the territory of a Contracting State; but not to derogate from more favourable national provisions;

- (iii) to other persons not listed above for the purposes of Articles 6, 7, 8, 9, 10, 11, 21 to 25 and Articles 27 to 31 of the Agreement;
- (b) in relation to Australia, to any person who is or has been an Australian resident or independently of this Agreement would be subject to the legislation of Australia.

Article 4 **Equality of Treatment**

1.
 - (a) Subject to this Agreement, Australian nationals as well as their family members and survivors shall, in the application of the Swiss legislation, receive equal treatment with Swiss nationals or their family members and survivors, as the case may be.
 - (b) Subparagraph (a) shall not apply to Swiss legislation:
 - (i) on the voluntary old-age, survivors' and disability insurance;
 - (ii) on old-age, survivors', and disability insurance of Swiss nationals who are gainfully occupied abroad in the service of the Swiss Confederation or organisations in the meaning of subparagraph 1(c) of Article 1a of the Federal Law on old-age and survivors' insurance.
2. Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by Australia in regard to rights and obligations which arise whether directly under the Australian legislation or by virtue of this Agreement.

Article 5

Export of Benefits

1. Unless provided otherwise in this Agreement,
 - (a) benefits payable under the Swiss legislation shall also be paid to nationals of Australia or other persons to the extent that they derive rights from a national of Australia, while the beneficiary is in the territory of Australia;
 - (b) Australian benefits which are payable by virtue of this Agreement shall be payable in the territory of Switzerland.
2.
 - (a) Benefits payable under the legislation of Switzerland shall be paid to a national of Australia residing in a third State as well as to their family members and survivors with respect to rights they derive from that national, under the same conditions and to the same extent as they would be paid to a Swiss national or to their family members and survivors in respect to rights they derive from a national.
 - (b) Where the legislation of Australia provides that a benefit is payable outside its territory, then that benefit, when payable by virtue of this Agreement, is also payable outside the territory of both Switzerland and Australia.
3. Subparagraph 1(a) shall not apply to ordinary pensions for insured persons with a disability of less than fifty percent provided under Swiss disability insurance or to the extraordinary pensions and helplessness allowances provided under Swiss old age, survivors' and disability insurance.
4. Where qualification for an Australian benefit is subject to limitations as to time, then references to Australia in those limitations shall be read as references to the territory of Switzerland.

5. Where a double orphan pension would be payable to a person under the social security laws of Australia, in respect of a young person whose sole surviving parent died while that young person was an Australian resident, if that person and that young person were residents of Australia, that pension shall, subject to the provisions of those laws, be payable while that person and that young person are residing in the territory of Switzerland.
6. The provisions of this Article shall not apply to carer payment.
7. In relation to Australia, any additional amount, increase or supplement that is payable in addition to a benefit under this Agreement shall be payable outside the territory of Australia only if it would be so payable if that benefit was payable independently of this Agreement.

PART II

PROVISIONS ON COVERAGE

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

Article 6 Application of the Part

This part applies where:

- (a) without the application of this Part an employee and/or the employer of the employee would otherwise be covered by the legislation of both Contracting States;
- (b) without the application of Article 8 letter B and Article 9 paragraph 1(b) and paragraph 2(b) an employee from Switzerland and/or the employer of the employee would otherwise come to be

covered by the legislation of Australia and not remain covered by the legislation of Switzerland; or

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

Article 7

General Provision

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

Article 8

Secondment

A. Affiliation under the Australian legislation

1. If an employee:
 - (a) has been covered by the Australian legislation;
 - (b) was sent, whether before, on or after the commencement of this Part, by an employer who is subject to the Australian legislation to work temporarily in the territory of Switzerland;
 - (c) is working temporarily in the territory of Switzerland in the employment of the employer or a related entity of that employer (i.e. the entity and the employer are members of the same wholly or majority owned group); and

- (d) a period of 5 years from the time the employee was sent to work in the territory of Switzerland has not elapsed;

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

2. If an employee:

- (a) has been covered by the Australian legislation;
- (b) was sent, whether before, on or after the commencement of this Part, by the Australian Government including a political subdivision or local authority of Australia, to work temporarily in the territory of Switzerland; and
- (c) is working temporarily in the territory of Switzerland in the employment of the Australian Government including a political subdivision or local authority of Australia;

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

B. Affiliation under the Swiss legislation

1. If an employee:

- (a) has been covered by the Swiss legislation;
- (b) was sent, whether before, on or after the commencement of this Part, by an employer who is subject to the Swiss legislation to work temporarily in the territory of Australia;

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- (c) is working temporarily in the territory of Australia in the employment of the employer or a related entity of that employer (i.e. the entity and the employer are members of the same wholly or majority owned group); and
 - (d) a period of 5 years from the time the employee was sent to work in the territory of Australia has not elapsed;

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

2. If an employee:

- (a) has been covered by the Swiss legislation;
- (b) was sent, whether before, on or after the commencement of this Part, by a public service of Switzerland to work temporarily in the territory of Australia; and
- (c) is working temporarily in the territory of Australia in the employment of the Swiss public service;

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

3. The spouse and children accompanying an employee in Australia to whom paragraph 1 or 2 applies shall remain insured under the legislation of Switzerland in so far as they are residing with that employee in Australia and are not gainfully employed or self-employed themselves in Australia.

Article 9

International Transportation

1.
 - (a) Subject to paragraph (b) an employee working for a Swiss airline company as the member of the crew of an aircraft in international traffic shall be subject only to Swiss legislation.
 - (b) An Australian resident who is employed by an Australian resident employer as a member of the crew of an aircraft in international traffic shall be subject only to the legislation of Australia.
2.
 - (a) Subject to paragraph (b) an employee working as the member of the crew of a vessel flying the Swiss flag shall be subject only to the legislation of the Contracting State of which he is resident.
 - (b) An Australian resident who is employed by an Australian resident employer on board a vessel shall be subject only to the legislation of Australia.

Article 10

Diplomatic and Consular Relations

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

Article 11

Exceptions from the Provisions on Coverage

The Competent Authorities of both Contracting States may, by mutual consent, agree to a different application of Articles 7, 8 and 9 with respect to any person or category of persons.

PART III

APPLICATION OF SWISS LEGISLATION

Article 12

Disability Insurance: Rehabilitation Measures

1. Australian nationals, who, immediately prior to eligibility for rehabilitation measures have been liable to pay contributions to the Swiss old age, survivors' and disability insurance, shall be entitled to such measures as long as they are physically present in Switzerland. Article 13 applies mutatis mutandis to this paragraph.
2. Australian nationals, who, immediately prior to eligibility for rehabilitation measures have not been liable to pay contributions to the Swiss old age, survivors' and disability insurance because of their age, but nevertheless have been insured under this insurance, shall be entitled to such measures as long as they are domiciled in Switzerland, if, immediately prior to eligibility for the measures they have resided in Switzerland without interruption for at least one full year. Minor children shall, moreover also be entitled to such measures if they are domiciled in Switzerland and if they have either been born disabled there or have resided there without interruption since birth.

3. Australian nationals residing in Switzerland who leave Switzerland for a period not exceeding three months shall not be deemed to have interrupted their residence in Switzerland within the meaning of paragraph 2.
4. A child who is an Australian national and who is born disabled in Australia to a mother who:
 - (a) is domiciled and insured in Switzerland; and
 - (b) was absent from Switzerland for not more than 2 months before the birth;shall be treated as a child born disabled in Switzerland. In the case of a congenitally handicapped child, Swiss disability insurance shall also be responsible for meeting expenses incurred abroad during the first three months after the birth to the same extent as it would have been required to meet these in Switzerland.
5. Paragraph 4 shall apply *mutatis mutandis* to a child born disabled outside the territory of the Contracting States; in such case, the Swiss disability insurance shall be responsible for meeting expenses incurred in the third State only if the measures had to be awarded there on an emergency basis due to the state of health of the child.

Article 13 **Continuation of Disability Insurance Coverage**

For the purpose of entitlement to ordinary pensions under Swiss legislation on disability insurance, Australian nationals shall remain insured for one year after the interruption of work resulting in disability, provided that person had to give up their gainful activity in Switzerland due to an accident or illness and that person's disability has been determined in Switzerland. The person must continue to pay

contributions to Swiss old age, survivors' and disability insurance as if they had their domicile in Switzerland.

Article 14

Old Age, Survivors' and Disability Insurance: Lump Sum Payments

1. If an Australian national or their survivor who does not reside in Switzerland is entitled to an ordinary partial pension under the Swiss old age and survivors' insurance which is equal to not more than 10% of the corresponding ordinary full pension, that person shall be granted instead of the partial pension, a lump sum which corresponds to the capitalised value of the pension payable under Swiss legislation when the insured event occurs. If an Australian national or their survivor, who received such a partial pension, permanently leaves Switzerland, that person shall also be granted a lump sum which corresponds to the capitalised value of that pension at the time of departure.
2. If the ordinary partial pension is equivalent to more than 10% but not more than 20% of the corresponding ordinary full pension, an Australian national or their survivor who does not reside in Switzerland or who is permanently leaving Switzerland may opt between having the pension paid or a lump sum. This option shall be made during the course of the procedure to determine the pension if the entitled person is staying outside Switzerland when the insured event occurs, or when leaving the country, if the entitled person already received a pension in Switzerland.
3. In the case of a married couple where both spouses have been insured under the Swiss insurance, the lump sum is paid to one spouse only when the other spouse is entitled to a pension.
4. When the lump sum has been paid out by the Swiss insurance institution no further claims can be asserted against that institution in respect of previous contributions paid or of corresponding insurance periods.

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5. Paragraphs 1 to 4 shall apply mutatis mutandis to ordinary pensions of the Swiss disability insurance provided that:
- (a) the person, who has entitlement, has achieved the age of 55 years; and
 - (b) the Swiss insurance doesn't require any further verification of the fulfilment of the conditions concerning the disability of that person.

Article 15 **Extraordinary Pensions**

1. Australian nationals shall under the same conditions as Swiss nationals be entitled to receive a Swiss extraordinary survivors' pension, disability pension or old age pension which replaces a disability or survivors' pension if, immediately before the date from which they claim the pension they have resided in Switzerland for a continuous period of not less than five years.
2. For the purpose of paragraph 1:
- (a) no account shall be taken of any period during which the persons concerned were exempted of the Swiss old age, survivors' and disability insurance; and
 - (b) a period of residence in Switzerland shall not be regarded as interrupted if the absence from Switzerland is not more than three months in any calendar year. The period of three months may be extended in exceptional cases.

Article 16 **Refund of Contributions**

1. Instead of a Swiss pension, an Australian national who has left Switzerland definitively may, on application, obtain the refund of

the contributions paid to the Swiss old-age and survivors' insurance. Their survivor who has left Switzerland and is not a Swiss national may also apply for the refund. The refund is ruled by the Swiss legislation.

2. Once the refund has been paid, no further claims can be asserted against the Swiss old-age, survivors and disability insurance in respect of previous insurance periods.

PART IV

AUSTRALIAN BENEFITS

Article 17

Residence or Presence in Switzerland or a Third State

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit, other than a carer payment, except for not being an Australian resident and in Australia on the day on which the claim is lodged, but:
 - (a) is an Australian resident or a resident of Switzerland or a third State with which Australia has concluded an agreement on social security which includes provision for cooperation in the assessment and determination of claims for benefits and which includes that category of benefit; and
 - (b) is in Australia, or the territory of Switzerland or that third State,

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

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

Article 18
Totalisation for Australian Benefits

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

- (a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the legislation of Australia for that benefit; and
- (b) a period of Australian working life residence equal to or greater than the period referred to in paragraph 3; and
- (c) insurance periods in Switzerland,

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

- only if those insurance periods in Switzerland have already been used or can be used at the time of totalisation, to obtain a benefit from Switzerland; and
 - only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.
2. For the purpose of this Article, where a person has a period as an Australian resident and insurance periods in Switzerland, any period of overlap shall be taken into account once only by Australia as a period as an Australian resident.

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3. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:
 - (a) for the purpose of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least six months must be continuous; and
 - (b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum period shall be required.
 4. For the purposes of this Article, an insurance period in Switzerland shall not include a period for which a person has received a refund of contributions under Article 16.

Article 19

Calculation of Australian Benefits

1. Subject to paragraph 2, where an Australian benefit other than a double orphan pension is payable, whether by virtue of this Agreement or otherwise, to a person outside the territory of Australia, the amount of the benefit shall be determined according to the legislation of Australia but when assessing the rate of the Australian benefit only a proportion of any Swiss benefit which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of Australian working life residence (not exceeding 300) by the amount of that Swiss benefit and dividing that product by 300.
2. Only a person receiving a proportionalised Australian benefit shall be entitled to receive the concessional assessment of income described in paragraph 1.

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3. The provisions in paragraph 1 of this Article and in Article 20 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
 4. Subject to the provisions of paragraph 6 where an Australian benefit, other than carer payment and double orphan pension, is granted by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:
 - (a) calculating that person's income according to the legislation of Australia but disregarding in that calculation the Swiss benefit received by that person and by that person's partner, if applicable;
 - (b) deducting the amount of the Swiss benefit received by that person from the maximum rate of that Australian benefit; and
 - (c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculator set out in the legislation of Australia, using as the person's income the amount calculated under subparagraph (a).
 5. Where a member of a couple is, or both members of a couple are in receipt of a Swiss benefit or benefits, each of them shall be deemed, for the purpose of paragraphs 1 and 4 and for the legislation of Australia, to be in receipt of half of either the amount of that benefit or the total of both those benefits as the case may be.
 6. Where the rate of a benefit calculated in accordance with paragraph 4 is less than the rate of that benefit which would be payable under paragraph 1 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.
 7. The provisions of paragraph 4 shall continue to apply for 26 weeks where a person departs temporarily from Australia.

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8. Where a person receives a lump sum payment under Swiss legislation, as described in paragraphs 1 and 2 of Article 14, the amount of the lump sum payment shall be assessed as income for 12 months from the date the lump sum payment is entitled to be received when calculating the rate of the Australian benefit.
 9. For the purposes of paragraph 8 only, for Australia the term Australian benefit shall include all social security payments under the social security laws of Australia.

PART V

COMMON PROVISIONS

Article 20

Common Provisions for the Calculation of Benefits

1. Where a Contracting State (the first Contracting State) makes a payment under this Agreement or under its social security laws to a person who resides in the territory of the other Contracting State, the first Contracting State will disregard from the application of any income test it applies, any income-tested payment made by the other Contracting State under this Agreement or under the other Contracting State's social security laws to that person.
2. The principles set out in paragraph 1 will continue to apply when a beneficiary moves to reside in a third country as if the beneficiary had not moved to that third country, provided that the relevant benefit is payable in that third country.
3. Where a person residing in a third country lodges a valid claim for a benefit, the principles set out in paragraphs 1 will be applied as if that person was resident in the territory of the Contracting State where he or she was last resident before moving to that third

country provided that the relevant benefit is payable in that third country.

PART VI

MISCELLANEOUS PROVISIONS

Article 21

Exchange of Information and Mutual Assistance

The Competent Authorities and Competent Institutions, to the extent permitted by the legislation they administer, shall:

- (a) make the necessary administrative arrangements required to apply this Agreement;
- (b) subject to Article 23, communicate to each other any information necessary for the application of this Agreement;
- (c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of the Agreement;
- (d) notify each other about all changes to their legislation which may affect the scope and application of this Agreement; and
- (e) designate liaison bodies to facilitate the application of this Agreement.

Article 22

1. Subject to national laws and regulations, when implementing this Agreement the Competent Authorities and Competent Institutions of the Contracting States shall lend their good offices and furnish assistance to one another, as if they were applying their own

legislation. Assistance shall as a rule be free of charge; the Competent Authorities may, however, mutually agree to reimburse certain costs.

2. When assessing the degree of disability the Competent Institutions of each Contracting State may, where appropriate, take account of information and medical reports provided by the Competent Institutions of the other Contracting State.

Article 23 **Data Protection**

1. In providing assistance under Article 21, a Contracting State shall supply to the other Contracting State data about a person, particularly about any payments it makes to that person, only where that person:
 - (a) wishes to make use of any provision of the Agreement;
 - (b) claims a benefit from the first Contracting State after the Agreement enters into force; or
 - (c) is receiving a benefit from the second Contracting State before the Agreement enters into force and authorises the first Contracting State to provide the data to the second Contracting State.
2. In no case shall the provisions of this Agreement be construed so as to impose on the Competent Authority or Competent Institution of a Contracting State the obligation:
 - (a) to carry out administrative measures at variance with the laws and regulations or administrative practice of that Contracting State or the other Contracting State; or

- (b) to supply details which are not obtainable under its laws and regulations or in the normal course of the administration of that Contracting State or of the other Contracting State.
- 3. When information is transmitted in accordance with the Agreement, the following provisions are applicable for the processing and protection of that information.
 - (a) The receiving Competent Authority or Competent Institution shall use the information only:
 - (i) for the purpose indicated; or
 - (ii) in accordance with its own legislation, for other purposes concerning social security, including related judicial procedure.
 - (b) The Competent Authority or Competent Institution that provides the information shall ensure that it is accurate and that the contents are for the purpose indicated. In this respect, any restrictions concerning the transmission of information stipulated under the national legislation of that Contracting State must be respected. If inadequate information or information which should not have been transmitted is sent, the receiving Competent Authority or Competent Institution shall be informed by the sending Competent Authority or Competent Institution immediately this is discovered and shall rectify the situation or destroy the information in question.
 - (c) The transmitted information shall be kept only as long as the purpose for which it was transmitted requires. It should be ensured that the destruction of the information relating to social security may not damage the interests of the persons concerned.

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- (d) The Competent Authorities and Competent Institutions shall protect all information provided against any non-authorised access, non-authorised modification or non-authorised communication.

Article 24

Lodgement of Documents

1. Any reduction in or exemption from fees or stamp duties for documents and certificates provided for in the legislation of one Contracting State with respect to the issuing of a certificate or document required in accordance with that legislation, shall be extended to the corresponding certificates or documents required in accordance with the legislation of the other Contracting State or pursuant to this Agreement.
2. Documents and certificates, which are to be produced for the purposes of applying this Agreement, shall not require diplomatic or consular authentication.

Article 25

1. The Competent Authorities, courts and Competent Institutions of a Contracting State may not refuse to deal with requests or to take account of other documents because they have been drawn up in an official language of the other Contracting State.
2. When applying this Agreement the Competent Authorities, courts and Competent Institutions of the Contracting States may correspond directly with each other and with the persons affected by this Agreement or their representatives in their official languages.
3. The reference in this Article to a court is a reference to a Swiss court.

Article 26

1. A claim, submitted to a Competent Institution in the territory of a Contracting State for a benefit in accordance with the legislation of that Contracting State, shall also be deemed to be an application for a corresponding benefit in accordance with the legislation of the other Contracting State so long as the claimant has indicated in that claim that there is, or there was, an affiliation with the social security system of the other Contracting State. This shall not apply if the claimant declares that the determination of a benefit pursuant to the legislation of a Contracting State is deferred on the basis of age.
2. The date of receipt of a claim in accordance with paragraph 1 shall be deemed to be the date of lodgement of that claim under the legislation of the first Contracting State.

Article 27

1. A claim, notice or appeal which is, in accordance with the legislation of a Contracting State, to be submitted to the Competent Authority or Competent Institution of that Contracting State by a prescribed period shall be deemed to have been submitted on time if it is submitted to Competent Authority or Competent Institution of the other Contracting State by that period. The date on which a claim, notice or appeal is lodged with the Competent Authority or Competent Institution of the other Contracting State shall be treated, for the purposes of assessing entitlement to benefit, as the date of lodgement of that document with the Competent Authority or Competent Institution of the first Contracting State.
2. The Competent Authority or Competent Institution to which the claim, notice or appeal has been submitted shall arrange for it to be transmitted to the Competent Authority or Competent Institution of the other Contracting State.

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3. The reference in this Article to an appeal document is a document concerning an appeal that may be made to an administrative body established by the social security laws and regulations of either Contracting State.

Article 28

1. Payments of cash benefits under this Agreement may be made in the currency of the Contracting State whose Competent Institution has to make the payments or other currency as determined by that Contracting State.
2. If a Competent Institution of one Contracting State has to make payments to a Competent Institution of the other Contracting State, such payments shall be made in the currency of the other Contracting State.
3. Should a Contracting State make provisions to restrict foreign exchange operations, that Contracting State shall immediately adopt measures to secure the transfer of amounts payable by both sides pursuant to this Agreement.
4. A benefit payable by a Contracting State by virtue of this Agreement or under its legislation shall be paid by that Contracting State without deduction of administrative fees and charges by the government or the corresponding Competent Institution for processing and paying that benefit, whether the person qualifying for the benefit is in the territory of the other Contracting State or in a third State.

Article 29

Recovery of Overpayments

1. If a Competent Institution of a Contracting State has overpaid cash benefits to any person under this Agreement the amount of

the overpayment may be deducted in favour of that Competent Institution from arrears of a corresponding benefit to which there is entitlement under the legislation of the other Contracting State, in so far as this is permitted by the legislation of the second Contracting State.

2. In relation to Australia a reference in paragraph 1 to a benefit means a pension, benefit or allowance payable under its social security laws.

Article 30 **Resolution of difficulties**

1. The Competent Authorities of the Contracting States shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
2. If a solution cannot be found in this way, the matter in dispute shall be referred to arbitration which shall settle it within the meaning and spirit of this Agreement. The Contracting States shall provide for the composition and procedure of that arbitration by mutual agreement.
3. Paragraph 2 does not apply in relation to the application of Part II of this Agreement.

PART VII**TRANSITIONAL AND FINAL PROVISIONS****Article 31****Recognition of Prior Periods and Events**

1. This Agreement shall also apply to contingencies which materialised before the date of its entry into force.
2. This Agreement shall not confer any rights to the payment of benefits in respect of periods before its entry into force.
3. For the purposes of determining entitlement of a person to a benefit pursuant to this Agreement:
 - (a) in relation to Switzerland, account shall also be taken of all Swiss insurance periods completed before the entry into force of this Agreement;
 - (b) in relation to Australia, any events or facts and any periods
 - (i) as an Australian resident;
 - (ii) of Australian working life residence; or
 - (iii) of Swiss insurance,shall, subject to this Agreement, be taken into account in so far as those periods, events or facts are applicable in regard to that person regardless of when they occurred or were accumulated.
4. This Agreement shall not apply to claims which have been settled by a lump sum or the refund of contributions before its entry into force.

Article 32**Decisions And Claims Made Before The Entry Into Force**

1. Decisions made before the entry into force of this Agreement shall not prevent the application of this Agreement.
2. Claims which were determined before the entry into force of this Agreement shall on request be re-examined in accordance with this Agreement.
3. Revisions carried out by virtue of this Article shall not result in a reduction in the amount of benefit being paid before the revisions.
4. Subject to paragraph 2 of Article 31, in the case of claims which are being examined under paragraph 2, the prescribed time limits for lodgement of claims and periods for statute-barring in accordance with the legislations of the Contracting States shall not commence before this Agreement enters into force.

Article 33**Review of Agreement**

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

Article 34**Entry Into Force And Termination**

1. This Agreement shall enter into force on the first day of the month following the month in which notes are exchanged by the

Contracting States through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalised. The Agreement is concluded for an indefinite period.

2. Except where the Agreement has been terminated under Article 60 of the Vienna Convention on the Law of Treaties of 23 May 1969 and subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party received from the other a note through the Diplomatic channel indicating the intention of the other Party to terminate this Agreement.
3. In the event that this Agreement is terminated in accordance with paragraph 2:
 - (a) the Agreement shall continue to have effect in relation to all persons who:
 - (i) at the date of termination, are in receipt of benefits by virtue of this Agreement;
 - (ii) prior to the expiry of the period referred to in paragraph 2, have lodged claims for, and would be entitled to receive benefits by virtue of this Agreement; or
 - (iii) immediately before the date of termination, are subject only to the legislation of one Contracting State by virtue of Article 8 of this Agreement provided that the employee continues to satisfy the criteria of that Article;
 - (b) entitlements in the process of being acquired pursuant to the provisions of this Agreement may be settled by agreement.

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

DONE in two copies at Canberra this ninth day of October, two thousand and six in the English and French languages, both texts being equally authoritative.

FOR THE GOVERNMENT OF
AUSTRALIA

Mal Brough
Minister for Families, Community
Services and Indigenous Affairs

FOR THE SWISS FEDERAL COUNCIL

Pascal Couchepin
Head of the Federal Department of Home
Affairs

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.