



ANALYSIS

Title
1. Short Title and commencement

2. Adoption of agreement and
modification of Social Security Act
1964
3. Repeals, revocation, and savings
Schedule

1987, No. 71

**An Act to provide for reciprocity with Australia in
relation to social security** [8 April 1987

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Social Security (Reciprocity with Australia) Act 1987.

(2) This Act shall come into force on a date to be fixed by the Governor-General by Order in Council. The date so fixed may be a date before the date on which the Order in Council is made.

2. Adoption of agreement and modification of Social Security Act 1964—(1) The provisions contained in the agreement set out in the Schedule to this Act shall have force and effect so far as they relate to New Zealand.

(2) The provisions of the Social Security Act 1964 and of the regulations and orders in force under that Act shall have effect subject to such modifications as may be required for the purpose of giving effect to the provisions of the agreement.

3. Repeals, revocation, and savings—(1) The following enactments are hereby repealed:

- (a) The Social Security (Reciprocity with Australia) Act 1948:
- (b) Section 135 (4) of the Social Security Act 1964:

(c) Section 12 of the Social Security Amendment Act 1974:

(d) The Social Security (Reciprocity with Australia) Amendment Act 1976.

(2) The Social Security (Reciprocity with Australia) Act Commencement Order 1949 is hereby revoked.

(3) Notwithstanding the repeal and revocation of the enactments specified in this section, those enactments shall remain in full force and effect in respect of any application, grant, or other matter made, commenced, or entered into before the commencement of this Act until, in accordance with those enactments or this Act, the application, grant, or other matter is reviewed or otherwise dealt with.

Section 2 (1)

SCHEDULE
AGREEMENT
BETWEEN THE GOVERNMENT OF NEW ZEALAND
AND THE GOVERNMENT OF AUSTRALIA
PROVIDING FOR RECIPROCITY IN MATTERS
RELATING TO SOCIAL SECURITY

The Government of New Zealand, and

The Government of Australia,

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 New Zealand and Australia 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 New Zealand 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 New Zealand, the Social Security Commission of New Zealand or, if either no longer exists, such other officer or body as the responsible Minister for the Contracting Party concerned notifies to the responsible Minister for the other Contracting Party;

SCHEDULE—*continued*

- (d) “New Zealand benefit” means a benefit referred to in Article 2 in relation to New Zealand; and
- (e) “social security laws” means:
- (i) in relation to Australia, the Social Security Act 1947, and any Act passed in substitution for that Act, as amended, but not including amendments effected by laws made by Australia for the purposes of giving effect to an agreement on social security; and
 - (ii) in relation to New Zealand, the Social Security Act 1964, and any Act passed in substitution for that Act, as amended.

2. This Agreement applies:

- (a) in relation to Australia, to its external territories in the same manner as the social security laws of Australia apply to those territories; and
- (b) in relation to New Zealand, to New Zealand only and not to the Cook Islands, Niue or Tokelau,

and references to “Australia”, “New Zealand” or “territory” in relation to either of them shall be read accordingly.

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 in relation to the following benefits:
- (i) age pensions;
 - (ii) invalid pensions;
 - (iii) wives’ pensions;
 - (iv) carers’ pensions;
 - (v) widows’ pensions;
 - (vi) supporting parents’ benefits;
 - (vii) unemployment benefits;
 - (viii) sickness benefits;
 - (ix) double orphans’ pensions; and
 - (x) family allowances; and
- (b) in relation to New Zealand: the Social Security Act 1964 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 in relation to the following benefits:
- (i) national superannuation;
 - (ii) invalids’ benefits;
 - (iii) widows’ benefits;
 - (iv) domestic purposes benefits;
 - (v) unemployment benefits;
 - (vi) sickness benefits;

SCHEDULE—*continued*

- (vii) orphans' benefits; and
- (viii) family benefits.

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

This Agreement shall apply to persons who move between Australia and New Zealand and who are residing in either or both of Australia and New Zealand.

ARTICLE 4

Equality of Treatment

1. 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.

2. Subject to this Agreement, the citizens of each of the Contracting Parties shall be treated equally in the application of the social security laws of Australia and of New Zealand 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, deemed to be a citizen of the first-mentioned Contracting Party.

PART II—RESIDENCE

ARTICLE 5

Entitlement to Benefits During Residence or Presence in a Country

A person shall not be entitled, by virtue of this Agreement, to the benefits payable by a Contracting Party unless that person:

- (a) is residing permanently in the territory of that Contracting Party; or
- (b) has been in that territory for a period of 6 months (without regard to any earlier periods spent in that territory),

and otherwise meets the requirements of the social security laws of that Contracting Party in relation to those benefits.

ARTICLE 6

Recognition by One Country of Residence in the Other Country

1. Where a person is residing in the territory of one of the Contracting Parties and is a claimant for a benefit payable by that Contracting Party, each period of residence accumulated by that claimant or, as appropriate,

SCHEDULE—*continued*

by a related person in the territory of the other Contracting Party shall be deemed, for the purposes of the claim for that benefit, to be a period of residence by that claimant or related person in the territory of the first-mentioned Contracting Party.

2. In paragraph 1:

(a) “related person” means:

- (i) the spouse of the claimant;
- (ii) the last deceased spouse of the claimant;
- (iii) a child in respect of whom the benefit referred to in paragraph 1 is claimed; or
- (iv) the last surviving parent, or the deceased parent formerly responsible for the care and control, of the claimant, as the circumstances require; and

(b) “benefit” does not include unemployment benefit.

3. For the purposes of the social security laws of Australia relating to family allowance, a period of residence accumulated in New Zealand by a person, and by a child in respect of whom that benefit is claimed by that person, shall be deemed to be a period in which the person and the child had been in Australia.

ARTICLE 7

Country of Residence

1. Subject to paragraph 2, the question whether a person is or, at any past time, was residing in the territory of one of the Contracting Parties for the purposes of this Agreement shall be determined by reference to the domestic laws of that Contracting Party.

2. Where, for a period, a person is a resident of both Australia and New Zealand, that period shall be counted:

- (a) in relation to a claim for an Australian benefit, only as a period of residence in Australia; and
- (b) in relation to a claim for a New Zealand benefit, only as a period of residence in New Zealand.

PART III—PROVISIONS RELATING TO BENEFITS

ARTICLE 8

Commencement of Benefits

Where a person:

- (a) moves permanently from the territory of one Contracting Party to the territory of the other Contracting Party and arrives in the last-mentioned territory not more than 12 weeks after his or her departure from the first-mentioned territory; and
- (b) immediately prior to his or her departure, was paid a benefit by the first-mentioned Contracting Party,

any benefit that is payable, whether by virtue of this Agreement or otherwise, to that person by that other Contracting Party shall be paid with effect from a date conforming with the pattern of payments for the benefit payable to the person, being a date not later than the date succeeding that on which the first-mentioned benefit ceased to be paid.

SCHEDULE—continued

ARTICLE 9

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 10

Entitlement to Payment by New Zealand of National Superannuation

1. A person shall be entitled by virtue of this Agreement to the payment by New Zealand of national superannuation only if:

- (a) that person is of an age at which an age pension may be payable to the person; and
- (b) the income and assets of the person are such as would entitle the person to the payment of an age pension,

under the social security laws of Australia.

2. The rate of national superannuation payable by New Zealand by virtue of this Agreement to a person shall be subject to deduction of the amount of any Australian benefit payable to that person, in the same manner as the rate of national superannuation may be reduced under the social security laws of New Zealand by the amount of any overseas benefit, pension or periodical allowance, or part thereof, that is payable to a person entitled to receive a benefit under those laws.

ARTICLE 11

New Zealand Widows', Domestic Purposes, and Orphans' Benefits

Where a widow's benefit, a domestic purposes benefit or an orphan's benefit would be payable by New Zealand but for the fact that a child to whom that benefit would relate was born in Australia that child shall, for the purposes of a claim for that benefit, be deemed to have been born in New Zealand.

ARTICLE 12

Restriction on Dual Entitlement to Certain Benefits

Where a benefit specified in one of the columns set out in the following table has been paid by the Contracting Party named at the head of that column to or in respect of a person who is residing in the territory of that Contracting Party, that benefit shall cease to be payable if the other Contracting Party pays, to or in respect of that person while he or she is in the territory of the other Contracting Party, a benefit specified in the other column of that table.

Table

<i>Australian Benefit</i>	<i>New Zealand Benefit</i>
Family Allowance	Family Benefit
Double Orphan's Pension	Orphan's Benefit

SCHEDULE—*continued*

ARTICLE 13

Unemployment Benefit

1. This Article applies to any person who is a citizen of one of the Contracting Parties and who is in the territory of the other Contracting Party.

2. Subject to paragraph 4, a person to whom this Article applies shall be entitled to the payment of unemployment benefit by a Contracting Party only if the person:

- (a) has been continuously present in the territory of that Contracting Party for not less than 6 months since the date of his or her most recent arrival in that territory;
- (b) is residing in that territory on the date on which the person lodges a claim for that benefit and resides or has resided there throughout the period in respect of which the claim is lodged;
- (c) satisfies the competent authority of that Contracting Party, by reference to the person's circumstances, or his or her work history in that territory, that the person has permanently settled in that territory; and
- (d) meets those criteria which are specified for that benefit by the social security laws of that Contracting Party in regard to age, unemployment, capability and willingness to undertake suitable work, efforts to obtain such work and non-receipt of other benefits.

3. For the purposes of sub-paragraph 2 (c):

- (a) a person shall be deemed to satisfy the requirements in relation to work history in the territory of a Contracting Party if, since the date referred to in sub-paragraph 2 (a), the person has undertaken:

- (i) in relation to Australia, paid work for 8 weeks of at least 30 hours per week; or

- (ii) in relation to New Zealand, 8 weeks full employment;

- (b) consideration of a person's circumstances shall include consideration of:

- (i) the person's family arrangements;

- (ii) the housing or accommodation arrangements of the person and, if applicable, of the spouse and children of the person, whether in the territory of the Contracting Party concerned, of the other Contracting Party or elsewhere, including actions such as the purchase or lease of a home in the first-mentioned territory and the disposal of a former home in the other territory or elsewhere; and

- (iii) the arrangements made by the person in regard to any bank or comparable accounts, the transfer, disposal or location of any property, and taxation clearances.

4. Where a person to whom this Article applies has been resident in the territory of a Contracting Party for the period of 12 months immediately preceding the date on which the person lodges a claim for unemployment benefit in that territory, the person shall be required to meet, in relation to that claim, only the criteria specified for that benefit by the social security laws of that Contracting Party.

SCHEDULE—*continued*

5. For the purposes of paragraph 4, a period of residence in the territory of a Contracting Party in relation to a person shall include any period or periods of temporary absence by that person from that territory that do not exceed in the aggregate 2 calendar months, and that do not break the continuity of that period of residence.

ARTICLE 14

Supporting Parents' Benefit and Domestic Purposes Benefit

1. This Article applies to any person who is a citizen of one of the Contracting Parties and who is in the territory of the other Contracting Party.

2. Subject to paragraph 3, a person to whom this Article applies shall not be granted a supporting parents' benefit or a domestic purposes benefit by a Contracting Party unless, in addition to meeting the requirements for that benefit of the social security laws of that Contracting Party, the person has been continuously present in the territory of that Contracting Party for not less than 6 months since the date of his or her most recent arrival in that territory.

3. Where a person to whom this Article applies has been resident in the territory of a Contracting Party for the period of 12 months immediately preceding the date on which the person lodges a claim, in Australia, for supporting parents benefit or, in New Zealand, for domestic purposes benefit, the person shall be required to meet, in relation to that claim, only the criteria specified for that benefit by the social security laws of that Contracting Party.

4. For the purposes of paragraph 3, a period of residence in the territory of a Contracting Party in relation to a person:

- (a) shall include any period or periods of temporary absence by that person from that territory that do not exceed in the aggregate 2 calendar months, and that do not break the continuity of that period of residence; and
- (b) shall not include any period deemed by Article 6 to be a period of residence by the person in that territory.

ARTICLE 15

Wife's Pension and Carer's Pension

A person who receives from Australia a wife's pension or a 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, be deemed to receive that pension by virtue of this Agreement.

PART IV—MISCELLANEOUS PROVISIONS

ARTICLE 16

Lodgement of Claims

1. Subject to paragraph 3, a claim for a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either of the Contracting Parties, in accordance with administrative arrangements made pursuant to Article 20, at any time after the Agreement enters into force.

SCHEDULE—*continued*

2. Where a claim for a benefit payable by one of the Contracting Parties is lodged in the territory of the other Contracting Party in accordance with paragraph 1, the date on which the claim is lodged shall be the date of lodgement of the claim for all purposes relating to the claim.

3. Paragraph 1 applies, in relation to Australia, only to those Australian benefits described as sickness benefit, double orphan's pension and family allowance.

ARTICLE 17

Portability of Benefits for Temporary Absences

Where a benefit is payable by one of the Contracting Parties by virtue of this Agreement, that benefit shall be payable, up to a period of 26 weeks, while the beneficiary is in the territory of the other Contracting Party or outside the territory of both, subject to the provisions of this Agreement and of the social security laws of the first-mentioned Contracting Party other than, in relation to Australia, those provisions precluding the payment of benefits outside Australia.

ARTICLE 18

Exclusion of New Zealand Benefits from Australian Income Test

Where a benefit is paid by Australia to a person who is in New Zealand and a benefit is also paid by New Zealand to that person, the amount of the benefit paid by New Zealand shall not be included in the income of that person for the purposes of the social security laws of Australia.

ARTICLE 19

Recovery of Overpayments

1. Where:

- (a) an amount paid by one of the Contracting Parties to a person in respect of a benefit exceeds the amount, if any, that is properly payable, whether by virtue of this Agreement or otherwise, in respect of that benefit; and
- (b) a benefit is payable by the other Contracting Party to that person, whether by virtue of this Agreement or otherwise,

the competent authority of that other Contracting Party shall, if requested by the other competent authority to do so, and in accordance with this Article, deduct the amount equivalent to the excess payment referred to in sub-paragraph (a) from amounts 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 authority of the Contracting 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 authority of the Contracting Party by whom that benefit is payable, in accordance with the social security laws of that Contracting Party, including in particular those provisions which relate to deduction from, in the case of Australia, family allowance and, in the case of New Zealand, family benefit.

SCHEDULE—*continued*

4. Where, in a case such as that described in sub-paragraph 1 (a), the person to whom the excess amount was paid by one of the Contracting Parties is in the territory of the other Contracting Party and is not in receipt of a benefit from that other Contracting Party, the competent authority of that other Contracting Party shall, if requested by the other competent authority to do so, endeavour to arrange with the person for the repayment to the first-mentioned Contracting Party of that excess amount.

5. Amounts deducted by one of the Contracting Parties in accordance with paragraph 1, and any amounts received by that Contracting Party pursuant to arrangements referred to in paragraph 4, shall be remitted to the other Contracting Party as agreed between the competent authorities or in administrative arrangements made pursuant to Article 20.

6. In this Article, “benefit” is not limited to those benefits specified in Article 2.

ARTICLE 20

Administrative Arrangements

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, and to enable benefits payable by one of the Contracting Parties, whether by virtue of this Agreement or otherwise, to persons who are residing in or in the territory of the other Contracting Party to be paid to those persons on behalf of the first-mentioned Contracting Party by that other Contracting Party.

2. Where arrangements of the kind referred to in paragraph 1 are required to be made on a mutual basis, the competent authorities shall cooperate, both in regard to matters affecting the operation of both social security systems and of each of them.

3. A benefit payable by one of the Contracting Parties by virtue of this Agreement shall be paid by that Contracting Party without deduction for administrative fees and charges.

ARTICLE 21

Exchange of Information

1. The competent authorities of the Contracting Parties shall, without limitation by Article 3, 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 other than those matters referred to in the social security laws of New Zealand as “Contributions Towards Cost of Domestic Purposes Benefits for Solo Parents” and “Medical and Hospital Benefits and other Related Benefits”.

2. Any information received by the competent authority of a Contracting Party pursuant to sub-paragraph 1 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 for other purposes or disclosed to other persons only with the prior consent of the competent authority who provided the information.

SCHEDULE—*continued*

3. In no case shall the provisions of paragraph 1 and 2 be construed so as to impose on the competent authority 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.

4. Unless there are reasonable grounds for believing the contrary, any information received by a competent authority from the other competent authority shall be accepted as valid or true, as the case requires.

5. A Contracting Party shall not raise any charges against the other Contracting Party for services of an administrative nature rendered by that first-mentioned Contracting Party to the other in accordance with this Agreement or the administrative arrangements made pursuant to Article 20, 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 22

Appeals

1. Any person who is affected by a determination, direction, decision or approval made or given by the competent authority or an 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 Australia or New Zealand may be lodged in the territory of the other Contracting Party, respectively, in accordance with administrative arrangements made pursuant to Article 20 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 the 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 23

Review of Agreement

The Contracting Parties may agree at any time to review any of the provisions of this Agreement and, in any case, shall, within the period of 3 years commencing on the date of signature of this Agreement, review the present limitation on continuation of payment by a Contracting Party of benefits to beneficiaries who move outside the territory of that Contracting Party.

SCHEDULE—*continued*
PART V—FINAL PROVISIONS

ARTICLE 24

Entry into Force

1. This Agreement shall enter into force on the date on which the Contracting Parties exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in New Zealand, as the case may be, and thereupon this Agreement shall have effect on and from the date specified for that purpose in that exchange of notes.

2. When this Agreement commences to have effect, the Agreement on Social Security between the Government of Australia and the Government of New Zealand, signed at Sydney on 15 April 1949, shall terminate but shall continue to have effect in relation to all persons who, immediately prior to its termination, were in receipt of a benefit paid by either or both of Australia and New Zealand by virtue of that Agreement but such a person may elect to have his or her future entitlement in respect of that benefit determined in accordance with this Agreement.

ARTICLE 25

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 Melbourne this 5th day of October 1986.

G. K. Ansell
FOR THE GOVERNMENT
OF NEW ZEALAND

B. L. Howe
FOR THE GOVERNMENT
OF AUSTRALIA