



Child Support (Reciprocal Agreement with Australia) Order 2000

Michael Hardie Boys, Governor-General

Order in Council

At Wellington this 29th day of May 2000

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 215 of the Child Support Act 1991 and section 1(5) of the Child Support Amendment Act 1999, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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Agreement between the Government of New Zealand and the Government of Australia on child and spousal maintenance

Order

1 Title

This order is the Child Support (Reciprocal Agreement with Australia) Order 2000.

2 Commencement

This order comes into force on 1 July 2000.

3 Interpretation

(1) In this order,—

Act means the Child Support Act 1991

agreement means the agreement set out in the Schedule

Australian decision means a decision to which the agreement applies.

(2) Any other terms that are used in this order, but not defined in it, have the same meanings as in the agreement.

4 Reciprocal agreement with Australia in force in New Zealand

The provisions contained in the agreement have force and effect so far as they relate to New Zealand, notwithstanding anything in the Act or in any other Act.

5 Modifications to Act required for purpose of giving effect to agreement

The provisions of the Act and of the regulations and orders in force under the Act have effect subject to the modifications made in clauses 6 to 9 for the purpose of giving effect to the agreement.

6 Definition of payee

The definition of payee in section 2 of the Act has effect as if the payee, in relation to any child support or spousal maintenance to which the agreement applies, includes a central authority authorised by the agreement to receive money.

7 Penalty for late payment of financial support debts

The Act has effect as if the penalty provisions of Article 16, instead of section 134 of the Act, apply to any financial

support debt to which the agreement applies from the end of the month in which the Commissioner transmits a request to the central authority in Australia to recover money payable in accordance with the agreement.

8 Enforcement of other child maintenance orders and agreements

Section 265(4)(b)(i)(B) of the Act has effect as if child support payable under an Australian decision commenced to be payable on the day on which the decision was made.

9 Enforcement of other spousal maintenance orders and agreements

Section 268(4)(b) of the Act has effect as if the Australian decision were deemed to be an order made on the day on which the decision was made.

10 Date of commencement of Part 2 of Child Support Amendment Act 1999

1 July 2000 is the date on which Part 2 of the Child Support Amendment Act 1999 comes into force.

cl 3(1), 4

Schedule
Agreement between the Government of New Zealand
and the Government of Australia on child and
spousal maintenance

PREAMBLE

THE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT OF AUSTRALIA (hereinafter referred to as “the Contracting States”),

CONSIDERING the principle that parents have an obligation, according to their capacity to pay, to provide their children with a proper level of financial support,

CONSIDERING the enforcement abroad of maintenance decisions gives rise to serious practical and legal difficulties,

DESIRING to conclude an Agreement on the jurisdiction of their administrative and judicial authorities, to facilitate recognition and enforcement of decisions, to exchange information and to provide for mutual co-operation in the collection and payment of monies in relation to child and spousal maintenance,

HAVE AGREED AS FOLLOWS:

PART I
SCOPE OF THE AGREEMENT

Article 1
Meaning of decision

1 This Agreement applies to a decision made by an administrative or judicial authority of a Contracting State under which money is payable in respect of a maintenance obligation, arising from parentage or marriage, between a payer and payee.

2 For the purposes of this Agreement a decision shall include:
(a) a child support assessment issued by an administrative authority;

- (b) an agreement to make payments for the maintenance of a child or spouse which has been registered with an administrative authority;
- (c) an assessment, order or agreement suspending, modifying or revoking a decision of the kind referred to in (a) or (b);
- (d) an order for child maintenance made by a judicial authority;
- (e) an order for spousal maintenance made by a judicial authority;
- (f) an agreement to make payments for the maintenance of a child or spouse which has been registered with a judicial authority;
- (g) an order or agreement suspending, modifying or revoking a decision of the kind referred to in (d), (e) or (f); and
- (h) a liability to pay an amount to an administrative authority for the maintenance of a child or as contribution to the cost of government benefits paid to a payee for the maintenance of a child.

3 For the purposes of this Agreement a decision shall not include:

- (a) an agreement to make payments for the maintenance of a child or spouse which has not been registered with an administrative or judicial authority;
- (b) a decision requiring the provision of maintenance by way of the transfer or settlement of property; or
- (c) a decision under which money is payable in respect of taxes, fines, penalties or other charges of a similar nature.

4 If a decision does not relate solely to the payment of an amount of money for maintenance, the effect of this Agreement is limited to the parts of the decision which concern maintenance obligations.

5 In relation to agreements referred to in Article 1.2(b), (c), (f) and (g), a reference in this Agreement to the making, suspension, modification or revocation of a decision means a decision by a judicial or administrative authority to register an agreement, to

register a variation of an agreement, or to suspend or revoke the registration of an agreement.

Article 2

Limitation to Australia/New Zealand cases

The provisions of this Agreement apply to a judicial or administrative authority of a Contracting State making, suspending, modifying or revoking a decision referred to in Article 1, if:

- (a) the payer is habitually resident in a Contracting State; and
- (b) the payee is habitually resident in the other Contracting State.

Article 3

Date of decisions

1 This Agreement applies irrespective of the date on which a decision was made.

2 Where a decision has been made prior to the date on which this Agreement enters into force between the Contracting States, this Agreement applies for payments falling due under the decision before and after that date.

PART II JURISDICTION

Article 4

Jurisdiction of judicial authorities

Subject to Article 11, a judicial authority of a Contracting State has jurisdiction to make a decision if at the date of the decision the payee has his or her habitual residence in that State.

Article 5

Jurisdiction of administrative authorities

1 Subject to Article 5.2 and 5.3, an administrative authority of a Contracting State has jurisdiction to make, suspend, modify or revoke a decision if, according to the national law of that Contracting State, the authority has that jurisdiction.

2 Subject to Article 5.3, where an administrative authority of a Contracting State has made or modified a decision referred to in

Article 1.2(a), (b) or (c) in accordance with the law of that Contracting State, and a payer, a payee or a Central Authority gives a notice in writing to that administrative authority indicating that the payee has his or her habitual residence in the other Contracting State:

- (a) the jurisdiction of that administrative authority to make or modify a decision referred to in Article 1.2(a), (b) or (c) ceases as from the date of the notice if the payee has his or her habitual residence in the other Contracting State; and
- (b) the decision of the administrative authority has force and effect for the period prior to the date of receipt by the administrative authority of the notice.

3 Where a payee has his or her habitual residence in a Contracting State, and there is in force a decision by a judicial or administrative authority of that Contracting State:

- (a) an administrative authority of the other Contracting State has no jurisdiction to make or modify a decision referred to in Article 1.2(a), (b) or (c); and
- (b) a decision of an administrative authority of the other Contracting State to make or modify a decision referred to in Article 1.2(a), (b) or (c) has no force and effect.

PART III APPLICABLE LAW

Article 6 Applicable law

1 Subject to Article 6.2, the administrative and judicial authorities of a Contracting State shall apply the national law of that State in exercising jurisdiction to make a decision.

2 Where a payer has a duty to pay child support to payees in both Contracting States, and administrative assessments may be issued in relation to that payer under the national laws of both Contracting States, the amount payable by the payer under any administrative assessment issued by an authority of a Contracting State shall be calculated according to the proportion which the number of eligible children in the Contracting State bears to the total number of eligible children in both Contracting States.

PART IV RECOGNITION AND ENFORCEMENT

Article 7 Recognition and enforcement

1 A decision made by an administrative or judicial authority of a Contracting State (the State of origin) is entitled to recognition and enforcement by operation of law in the territory of the other Contracting State (the State addressed).

2 Recognition or enforcement of a decision may be refused by an administrative or judicial authority of the State addressed:

- (a) if the administrative or judicial authority of the State of origin did not have jurisdiction under Article 4, 5 or 11;
or
- (b) if recognition or enforcement is incompatible with the public policy of the State addressed; or
- (c) if the decision was obtained by fraud.

3 Subject to Article 7.2(a), where a decision is incompatible with a previous decision made by an authority in a Contracting State between the same parties and having the same purpose:

- (a) the earlier decision shall be recognised and enforced with effect up to but excluding the day on which the later decision was made; and
- (b) the later decision shall be recognised and enforced with effect from and including the day on which the later decision was made.

4 If a decision provides for the periodical payment of maintenance, the decision shall be enforceable in respect of unpaid amounts already due and in respect of future payments.

5 There shall be no review by the administrative or judicial authorities of the State addressed of the merits of a decision, unless this Agreement otherwise provides.

Article 8 Procedure for recognition and enforcement

The procedure for recognition and enforcement of a decision shall be governed by the law of the Contracting State in which recognition or enforcement is sought.

Article 9 Partial recognition and enforcement

An application may be made at any time for partial recognition or enforcement.

Article 10 Default decisions

A decision made by default by a judicial authority of a Contracting State shall be entitled to recognition and enforcement only if notice of the institution of the proceedings, including notice of the substance of the claim, has been served on the defaulting party in accordance with the law of the other Contracting State and if, having regard to the circumstances, that party has had sufficient time to enable him or her to defend the proceedings.

Article 11 Provisional orders

1 Where under the law in force in a Contracting State a judicial authority makes, suspends, modifies or revokes a decision which has no effect unless and until confirmed by a judicial authority of the other Contracting State (a provisional order), the following provisions shall apply.

2 A payee or payer under a provisional order who is habitually resident in a Contracting State (hereinafter referred to as the State of origin) may apply to the authorities of that State to have the provisional order transmitted to the authorities of the other Contracting State (hereinafter referred to as the State addressed).

3 The Central Authority of the State of origin shall transmit the provisional order to the authorities of the State addressed.

4 The authorities of the State addressed shall take all appropriate steps to have a judicial authority make a decision whether to confirm, confirm with modification or refuse to confirm the provisional order.

5 The judicial authority of the State addressed may remit the provisional order to the judicial authority in the State of origin to take further evidence or further consider the provisional order.

6 Where a judicial authority in the State addressed confirms a provisional order (with or without modification) the order by operation of law shall be enforceable as a court order in the State addressed and in the State of origin.

PART V RECOVERY OF MONIES BY GOVERNMENT AUTHORITIES

Article 12

Recovery of monies by government authorities

1 A Central Authority of a Contracting State may, in its discretion, transmit to the Central Authority of the other Contracting State a request for authorities of the State addressed to recover, on behalf of the payee, monies payable under a decision.

2 A Central Authority may only transmit a request under Article 12.1 in respect of a decision which is entitled to recognition and enforcement in the State addressed under Part IV of this Agreement.

3 The Contracting States agree that, upon receipt of a request under Article 12.1, authorities of the State addressed shall take action to recover the monies payable under the decision.

Article 13

Procedure for recovery of monies

The procedure for the recovery of monies in accordance with Article 12 shall be governed by the laws of the State addressed.

Article 14

Disbursement of monies recovered

1 Monies recovered by the authorities of the State addressed shall be paid to the Central Authority of the State of origin.

2 The Central Authority of the State of origin shall disburse monies paid to it under Article 14.1 in accordance with the laws of the State addressed.

PART VI PENALTIES

Article 15

Penalties incurred prior to transfer of a decision

1 In this Article “penalty” means a penalty payable to an administrative authority by a payer under the law of a Contracting State:

- (a) in respect of an incorrect estimate of income given by the payer for the purpose of the making of a decision; or
- (b) in respect of the late payment to the administrative authority by the payer of monies payable under a decision of the kind referred to in Article 1.2(a) to (h).

2 Where a decision by an administrative or judicial authority is transmitted in accordance with Article 12 of this Agreement, any penalty payable under the law of the State of origin in relation to that decision:

- (a) shall be recognised and enforced in the State addressed in so far as the penalty relates to a period prior to the date of transmission of the decision;
- (b) shall be recovered by authorities of the State addressed if the Central Authority of the State of origin makes a request for its recovery to the Central Authority of the State addressed.

3 Where monies are recovered by the authorities of the State addressed in accordance with a request under Article 15.2(b):

- (a) the monies shall be paid to the Central Authority of the State of origin;
- (b) the Central Authority of the State of origin shall disburse monies in accordance with the laws of the State of origin.

Article 16

Penalties incurred after transfer of a decision

1 Where a request in relation to a decision by an administrative or judicial authority is transmitted in accordance with Article 12 of this Agreement:

- (a) the imposition of a penalty in respect of the late payment to an administrative authority by the payer of

monies payable under the decision shall be governed by the law of the State addressed; and

- (b) the penalty shall be disbursed in accordance with the laws of the State addressed.

2 Where a request in relation to a decision by an administrative or judicial authority is transmitted in accordance with Article 12 of this Agreement, any penalty payable under the law of the State of origin in respect of an incorrect estimate of income given by the payer for the purpose of the making of the decision:

- (a) shall be recognised and enforced in the State addressed;
- (b) shall be recovered by authorities of the State addressed if the Central Authority of the State of origin makes a request for its recovery to the Central Authority of the State addressed.

3 Where monies are recovered by the authorities of the State addressed in accordance with a request under Article 16.2(b):

- (a) the monies shall be paid to the Central Authority of the State of origin;
- (b) the Central Authority of the State of origin shall disburse monies in accordance with the laws of the State of origin.

PART VII PARENTAGE PRESUMPTIONS

Article 17

Reciprocal recognition of court parentage findings

Where a judicial authority of one Contracting State finds that a person is a parent of a child, and the finding has not been altered, set aside or reversed by the judicial authorities of that State, the person shall be presumed to be a parent of the child by operation of law in the territory of the other Contracting State.

Article 18

Reciprocal recognition of birth registrations

Where a person's name is registered as a parent of a child in a register of births or parentage information by an administrative authority of a Contracting State, the person shall be presumed to be a

parent of the child by operation of law in the territory of the other Contracting State.

Article 19

Reciprocal recognition of instruments of acknowledgment

Where under a law of a Contracting State a person has executed an instrument acknowledging that he is the father of a child, and that instrument has not been annulled or otherwise set aside, the person shall be presumed to be a parent of the child by operation of law in the territory of the other Contracting State.

PART VIII LEGAL AID

Article 20

No discrimination in provision of legal aid

Nationals of either Contracting State, and persons habitually resident in either Contracting State, shall enjoy legal aid for court proceedings relating to child and spousal maintenance in each Contracting State on the same conditions as if they themselves were nationals or habitually resident in that State.

PART IX CENTRAL AUTHORITIES

Article 21

Central Authorities

1 The Central Authority for New Zealand shall be the Commissioner of Inland Revenue. The Central Authority for Australia shall be the Child Support Registrar.

2 Each Contracting State shall be free to designate additional Authorities and to determine the extent of their competence. However communications may in all cases be sent directly to the Central Authority.

3 Each Contracting State shall notify the other Contracting State of the Authorities designated from time to time and the extent of their competence.

Article 22

Duties of Central Authorities

The Central Authority of each Contracting State shall:

- (a) co-operate with each other and promote co-operation amongst administrative and judicial authorities in their States to achieve the purposes of this Agreement;
- (b) on request by the Central Authority of the other Contracting State, obtain and provide reports on the progress made by administrative and judicial authorities in recovering monies payable under a decision;
- (c) co-operate in the provision of information to children, payees and payers within its territory on their rights and duties under the law relating to maintenance of the other Contracting State.

Article 23

Exchange of information

1 At the request of the Central Authority of a Contracting State, the Central Authority of the other Contracting State, either directly or through other administrative or judicial authorities, shall take all appropriate steps to obtain and provide to the requesting Central Authority any information necessary or convenient for the operation of this Agreement or for the laws of the Contracting States relating to maintenance, including:

- (a) information on the whereabouts of a payer; or
- (b) information about the income, earning capacity, property, financial resources or commitments of a child, a payer or payee.

2 Any information about an individual which is transmitted in accordance with this Agreement to an administrative or judicial authority of a Contracting State:

- (a) is confidential; and
- (b) shall be used only for the purposes of implementing this Agreement and the laws of the Contracting States relating to maintenance; and
- (c) shall be disclosed only if disclosure is required or permitted under the laws of the Contracting State.

3 In no case shall the provisions of this Article be construed so as to impose on the administrative or judicial authorities of a Contracting State the obligation to obtain information which is not obtainable under the laws or in the normal course of administration of those authorities.

4 At any time the Contracting Parties may determine that communication between the Contracting States, including exchange of information, may be conducted by electronic data transfer.

PART X SERVICE ARRANGEMENT

Article 24 Service Arrangement

1 The Child Support Registrar for Australia and the Commissioner of Inland Revenue for New Zealand may enter an arrangement (hereinafter referred to as the Service Arrangement) to facilitate the implementation of this Agreement.

2 The matters which may be dealt with in the Service Arrangement include but are not limited to:

- (a) the procedures to be adopted by administrative authorities in the Contracting States in identifying and resolving cases of conflict in jurisdiction between the administrative or judicial authorities of one State and the administrative or judicial authorities of the other State;
- (b) the exchange of information between authorities of the Contracting States and the protection of the privacy of the subjects of such information;
- (c) the location of payers and the service of documents on payers;
- (d) the making of determinations as to the income, earning capacity, property, financial resources or commitments of a child, a payer or payee;
- (e) the making of child support assessments and other decisions;
- (f) procedures for the recognition and enforcement of decisions to which this Agreement applies;
- (g) procedures for the collection and disbursement of monies payable under decisions and penalties to which this Agreement applies;

- (h) procedures for determining applications by payers and payees for the suspension, modification or revocation of decisions to which this Agreement applies;
- (i) parentage testing;
- (j) evaluation of the operation of this Agreement and the Service Agreement;
- (k) the provision of information and advice to payers and payees;
- (l) the reimbursement by a Child Support Agency of one Contracting State of the costs incurred by the Child Support Agency of the other Contracting State in the provision of services under this Agreement or the Service Arrangement.

PART XI TERRITORIAL APPLICATION

Article 25 Australian Territories

This Agreement extends to the following Australian Territories:

Norfolk Island, the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands.

Article 26 Territories associated with New Zealand

This Agreement shall not apply to Tokelau, unless the Contracting States exchange notes agreeing to the terms on which it will so apply.

PART XII GENERAL PROVISIONS

Article 27 Other treaty obligations

As long as this Agreement is in force, it shall replace, as between the Contracting States, the Convention on the Recovery Abroad of Maintenance signed at New York on 20 June 1956.

Article 28 Resolution of disputes

1 The administrative and judicial authorities of the Contracting States shall resolve, to the extent possible, any difficulties which

arise in interpreting or applying this Agreement or the Service Arrangement according to the spirit and fundamental principles of this Agreement.

2 Where the administrative and judicial authorities have not resolved difficulties which arise in interpreting or applying this Agreement or the Service Arrangement, a Contracting State may request consultation. Such consultation shall take place promptly.

Article 29 Review of Agreement

1 The Contracting States may agree at any time to review the whole or any part of this Agreement or the Service Arrangement.

2 At any time a Contracting State may request that the Contracting States meet to review this Agreement or the Service Arrangement. Representatives of the Contracting States shall meet for that purpose no later than six months after the date of that request and, unless the Contracting States otherwise agree, the meeting shall be held in the territory of the Contracting State to which the request was made.

3 The Contracting States shall exchange information as to changes in their laws or administrative practices relating to maintenance which are relevant to the operation of this Agreement or the Service Arrangement.

PART XIII FINAL PROVISIONS

Article 30 Entry into force

1 The Contracting States shall notify each other through diplomatic channels when their respective requirements for the entry into force of this Agreement have been complied with.

2 This Agreement shall enter into force 30 days after the date on which the Contracting States have notified each other in accordance with Article 30.1.

3 The Contracting States shall notify each other through diplomatic channels when their respective requirements for the entry into force of the Service Arrangement have been complied with.

4 The Service Arrangement shall enter into force 30 days after the date on which the Contracting States have notified each other in accordance with Article 30.3.

Article 31 Termination

1 This Agreement may be terminated by either Contracting State giving notice in writing through the diplomatic channel and the Agreement shall terminate six months after the date of the notice.

2 The Service Arrangement may be terminated by either Contracting State giving notice in writing through the diplomatic channel and the Service Arrangement shall terminate six months after the date of the notice.

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

DONE in duplicate at Canberra this twelfth day of April, 2000.

FOR THE GOVERNMENT
OF NEW ZEALAND:

SIMON MURDOCH

FOR THE GOVERNMENT
OF AUSTRALIA:

HON LAWRENCE
ANTHONY

Marie Shroff,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 1 July 2000, has 3 effects.

First, the order gives effect in New Zealand to the agreement made on 12 April 2000 between the Government of New Zealand and the Government of Australia on child and spousal maintenance.

Secondly, the order modifies some provisions of the Child Support Act 1991 for the purpose of giving effect to the agreement. The modifications are as follows:

- the definition of payee is extended to include, in relation to any child support or spousal maintenance to which the agreement applies, the central authority authorised by the agreement to receive money;
- the penalty provisions of Article 16 of the agreement, instead of section 134 of the Act, apply after the transfer of a debt under the agreement;
- sections 265 and 268 are modified to allow the collection of Australian decisions from the date they were made.

Thirdly, the order appoints 1 July 2000 as the date on which the amendment to the Family Proceedings Act 1980 that was made by Part 2 of the Child Support Amendment Act 1999 comes into force. That amendment substituted a new definition of **Convention country** in the Family Proceedings Act 1980.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 1 June 2000.

This order is administered in the Inland Revenue Department.
