

**Reprint
as at 1 July 2017**



Social Welfare (Reciprocity with Australia) Order 2002
(SR 2002/119)

Social Welfare (Reciprocity with Australia) Order 2002: revoked, on 1 July 2017, by clause 6 of the Social Welfare (Reciprocity with Australia) Order 2017 (LI 2017/86).

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 13th day of May 2002

Present:

Her Excellency the Governor-General in Council

Pursuant to section 19 of the Social Welfare (Transitional Provisions) Act 1990, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry of Social Development.

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Order

1 Title

This order is the Social Welfare (Reciprocity with Australia) Order 2002.

2 Commencement

This order comes into force on 1 July 2002.

3 Adoption of agreement and notes

- (1) The provisions contained in the Agreement on Social Security between the Government of New Zealand and the Government of Australia, done at Canberra on 28 March 2001 and set out in Schedule 1, have force and effect so far as they relate to New Zealand.
- (2) The provisions contained in the diplomatic notes between the Government of New Zealand and the Government of Australia, which amend the agreement referred to in subclause (1) and are set out in Schedule 2, have force and effect so far as they relate to New Zealand.

4 Modification of enactments

- (1) The provisions of the following enactments have effect subject to such modifications as may be required for the purpose of giving effect to the agreement and notes referred to in clause 3:
 - (a) the Social Welfare (Transitional Provisions) Act 1990:
 - (aa) Part 6 of the Veterans' Support Act 2014:
 - (b) the Social Security Act 1964:
 - (c) Part 1 of the New Zealand Superannuation and Retirement Income Act 2001:
 - (d) the regulations and orders in force under those Acts.
- (2) A reference (however expressed) in either of the following to an invalid's benefit under the Social Security Act 1964 in relation to New Zealand must on and after 15 July 2013 be read as a reference to a supported living payment on the ground of sickness, injury, disability, or total blindness under the Social Security Act 1964:

- (a) a provision of the agreement, or of the notes, referred to in clause 3:
- (b) a provision of a document related to the operation on or after 15 July 2013 of this order.

Clause 4(1)(aa): inserted, on 15 April 2003, by section 12(2) of the War Pensions Amendment Act 2003 (2003 No 18).

Clause 4(1)(aa): amended, on 7 December 2014, by section 278 of the Veterans' Support Act 2014 (2014 No 56).

Clause 4(1)(c): amended, on 21 April 2005, by section 9(2) of the New Zealand Superannuation and Retirement Income Amendment Act 2005 (2005 No 42).

Clause 4(2): inserted, on 15 July 2013, by section 97 of the Social Security (Benefit Categories and Work Focus) Amendment Act 2013 (2013 No 13).

5 Revocations

The following orders are revoked:

- (a) Social Welfare (Reciprocity with Australia) Order 1994 (SR 1994/264):
- (b) Social Welfare (Reciprocity with Australia) Amendment Order 1995 (SR 1995/242):
- (c) Social Welfare (Reciprocity with Australia) Amendment Order Commencement Order 1995 (SR 1995/298):
- (d) Social Welfare (Reciprocity with Australia) Amendment Order 1998 (SR 1998/242).

Schedule 1
Agreement on Social Security between the Government of New Zealand and the Government of Australia

cl 3(1)

The Government of New Zealand,

and

The Government of Australia

Referred to in this Agreement as “the Parties”

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

and

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

and

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

HAVE agreed as follows:

Part I
Definitions and Scope

Article 1—Definitions

1. In this Agreement unless the context otherwise requires:
 - (a) “Australian resident” has the meaning given to it under Article 5;
 - (b) “benefit”, in relation to a Party, means the benefits as listed and defined in Article 2 and unless otherwise stated includes any amount, increase or supplement that is payable in addition to that benefit or in respect of a person who is eligible for that amount, increase or supplement under the social security law of that Party;
 - (c) “competent authority”, in relation to New Zealand, means the Chief Executive of the Ministry of Social Policy and in relation to Australia, the Secretary of the Department of Family and Community Services;
 - (d) “competent institution”, in relation to a Party, means the institution or institutions that are responsible for the administration of the social security law of that Party;
 - (e) “CPI” means the Consumer Price Index (All Groups) Australia wide, kept by the Australian Statistician and published from time to time by

the Australian Bureau of Statistics, and in the event of the CPI being discontinued or abolished then such price index as the Australian Statistician substitutes for it;

- (f) “date of severe disablement” means the date a person who applies for a disability support pension or invalid’s benefit was first assessed as meeting the criteria for a disability support pension or invalid’s benefit under this Agreement or, where evidence supports an earlier date, the competent institutions may agree on an earlier date;
- (g) “financial year” means the period from 1 July of any year to 30 June of the next year;
- (h) “living alone”, in relation to New Zealand superannuation or veteran’s pension, has the meaning given to it under the social security law of New Zealand; and “not living alone” has a corresponding meaning;
- (i) “month”, in relation to New Zealand, means a calendar month, but where fractions of a month are to be aggregated, a month means 30 days;
- (j) “New Zealand resident” has the meaning given to it under Article 5;
- (k) “permanent resident” has the meaning given to it under Article 5;
- (l) “severely disabled” means a person who:
 - (i) has a physical impairment, a psychiatric impairment, an intellectual impairment, or two or all of such impairments, which makes the person, without taking into account any other factor, totally unable:
 - (aa) to work for at least the next 2 years; and
 - (bb) unable to benefit within the next 2 years from participation in a program of assistance or a rehabilitation program; or
 - (ii) is permanently blind;
- (m) “social security law”, in relation to a Party, means the laws of that Party specified in Article 2;
- (n) “territory”, in relation to New Zealand, means: New Zealand only and not the Cook Islands, Niue or Tokelau; and, in relation to Australia, means: Australia as defined in the social security law of Australia; and references to “New Zealand”, “Australia” or the “territory” of either shall be read accordingly;
- (o) “third country residence” has the meaning given to it under Article 5;
- (p) “working age residence” has the meaning given to it under Article 5;
- (q) “year” means 12 calendar months;
- (r) “1994 Agreement” means the Agreement on Social Security between the Government of New Zealand and the Government of Australia done at Wellington on 19 July 1994, as amended on 7 September 1995 and 2 July 1998; and

- (s) “1994 Agreement benefit” means a benefit defined in the 1994 Agreement in Article 2, paragraph 1, subparagraphs (a)(i), (ii), (iii), (iv), (v), (vi) and (vii).
2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the social security law of either Party.

Article 2—Legislative Scope

1. Except as provided under paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any legislation that subsequently amends, supplements, consolidates or replaces them:
- (a) in relation to Australia: the Acts forming the social security law in so far as those Acts provide for, apply to or affect the following benefits:
 - (i) age pension;
 - (ii) disability support pension;
 - (iii) carer payment in respect of the partner of a person who is in receipt of a disability support pension; and
 - (b) in relation to New Zealand: the *Social Security Act 1964* and the *Social Welfare (Transitional Provisions) Act 1990* in so far as they provide for, apply to or affect the following benefits:
 - (i) New Zealand superannuation;
 - (i) veteran’s pension; and
 - (iii) invalid’s benefit.
2. For the purposes of this Agreement an Australian disability support pension and a New Zealand invalid’s benefit shall be limited to cases where:
- (a) the person is severely disabled;
 - (b) the person was a resident of one of the Parties at the date of severe disablement; and
 - (c) the person, prior to the date of severe disablement, was residing in the territory of the other Party for a period of not less than one year at any time.

Article 3—Personal Scope

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident; or
- (b) is or has been a New Zealand resident.

Article 4—Equality of Treatment

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

Article 5—Residence Definitions

1. “Australian resident” has the meaning given to that term in the social security law of Australia but for the purposes of the Agreement also includes a New Zealand citizen who is not the holder of an Australian permanent visa but is lawfully residing in Australia. In deciding whether a person is residing in Australia, regard must be had to the following factors:
 - (a) the nature of the accommodation used by the person in Australia;
 - (b) the nature and extent of the family relationships the person has in Australia;
 - (c) the nature and extent of the person’s employment, business or financial ties with Australia;
 - (d) the nature and extent of the person’s assets located in Australia;
 - (e) the frequency and duration of the person’s travel outside Australia; and
 - (f) any other matter relevant to determining whether the person intends to remain permanently in Australia;and “residence in Australia” has a corresponding meaning.
2. “New Zealand resident” means, in relation to New Zealand, a person who has or had New Zealand as their principal place of residence except where that person was unlawfully resident or present in New Zealand or lawfully resident or present in New Zealand only by virtue of:
 - (a) a visitor’s permit;
 - (b) a temporary work permit; or
 - (c) a permit to be in New Zealand for the purposes of study at a New Zealand school or university or other tertiary educational establishment;and “residence in New Zealand” has a corresponding meaning.
3. “permanent resident” in relation to Australia means a person who is a citizen of Australia or who holds a permanent visa under the *Migration Act 1958* of Australia.
4. “third country residence” means a period of residence when a person was not either an Australian resident or a New Zealand resident.
5. “working age residence” in relation to a person means a period of residence between the ages of 20 and 64 years inclusive (being a maximum of 45 years) but does not include any period deemed pursuant to Article 8 or Article 12 to be a

period in which that person was an Australian resident or a New Zealand resident.

Part II

Provisions Relating to New Zealand Benefits

Article 6—Residence in Australia

1. Where a person would be entitled to receive a benefit under the social security law of New Zealand (including a person who would be entitled under Article 8) except that he or she is not ordinarily resident or resident and present in New Zealand on the date of application for that benefit, that person shall be deemed, for the purposes of that application, to be ordinarily resident and resident and present in New Zealand on that date, if he or she:
 - (a) is present either in Australia or New Zealand;
 - (b) is an Australian resident, including a person who has the intention of remaining an Australian resident for at least one year or has been residing in Australia for at least 26 weeks;
 - (c) has been a New Zealand resident at any time in his or her life for a continuous period of at least 1 year since attaining the age of 20 years; and
 - (d) in the case of New Zealand superannuation or a veteran's pension, is over the age of 65.
2. Subject to this Agreement, where a person is entitled to receive a benefit under the social security law of New Zealand (including a person who is entitled under paragraph 1, or Article 7, or both) but payment of that benefit is conditional on presence in New Zealand, that person shall be deemed, for the purpose of the payment of that benefit, to be present in New Zealand, if he or she is an Australian resident, and present either in Australia or New Zealand.
3. For the purposes of this Part, if a person who is an Australian resident is temporarily absent from Australia for a continuous period that does not exceed 26 weeks, the period of temporary absence from Australia shall not be considered as interrupting that person's residence in Australia.
4. Where a person is receiving a benefit by virtue of this Agreement and that person departs for a third country:
 - (a) a New Zealand benefit shall continue to be payable in accordance with the provisions for temporary absences under the social security law of New Zealand if the person was a New Zealand resident at the time he or she departed for the third country; and
 - (b) in all other cases a benefit shall continue to be payable for a period of 26 weeks.

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

Article 7—Presence in New Zealand

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

Article 8—Totalisation for New Zealand

1. In determining whether a person meets the residential qualifications for a New Zealand superannuation or a veteran's pension, the competent institution of New Zealand shall deem a period of Australian working age residence to be a period during which that person was both a New Zealand resident and present in New Zealand.
2. In determining whether a person meets the residential qualifications for an invalid's benefit, the competent institution of New Zealand shall deem a period as an Australian resident to be a period during which that person was both a New Zealand resident and present in New Zealand.
3. For purposes of paragraphs 1 and 2, where a period of residence in New Zealand and a period of residence in Australia coincide, the period of coincidence shall be taken into account only once as a period of residence in New Zealand.
4. The minimum period of working age residence in New Zealand to be taken into account for the purposes of paragraph 1 shall be 12 months, of which at least 6 months must be continuous.
5. This Article shall not apply to a claimant for New Zealand superannuation or a veteran's pension who is under the age of 65 years.

Article 9—Rate of New Zealand Superannuation and Veterans' Pensions in Australia

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

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

subject to the following provisions:

- (a) all periods of working age residence in New Zealand shall be aggregated;
 - (b) the maximum benefit rate shall be:
 - (i) in the case of a single person, the maximum rate of benefit (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) payable under the social security law of New Zealand to a single person who is not living alone; and
 - (ii) in the case of a married person, the maximum rate of benefit (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) payable under the social security law of New Zealand to a married person whose spouse also qualifies for New Zealand Superannuation or a veteran's pension in his or her own right;
 - (c) in no case shall the rate of benefit exceed 100% of the maximum benefit rate as defined in subparagraph (b);
 - (d) except as provided in paragraph 4, no account shall be taken of any benefit that is payable under the social security laws of Australia; and
 - (e) no account shall be taken of any benefit that is payable under the legislation of a third country unless paragraph 3 applies.
2. Where a married person, who is entitled to receive New Zealand superannuation or a veteran's pension, was an Australian resident and in receipt of an invalid's benefit immediately prior to becoming entitled to receive New Zealand superannuation or a veteran's pension, that person shall be entitled to receive the rate payable as provided in paragraph 1 to a person with a spouse who does not qualify for New Zealand superannuation or a veteran's pension in his or her own right.
3. If an Australian resident is not a permanent resident of Australia, periods of working age residence in a third country shall be deemed for the purposes of this Article to be periods of working age residence in New Zealand.

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

Article 10—Rate of New Zealand Invalid's Benefit in Australia

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

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

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

- (a) all periods of working age residence in New Zealand shall be aggregated;
 - (b) the maximum benefit rate shall be:
 - (i) in the case of a single person, the maximum rate of benefit (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) payable under the social security law of New Zealand to a single person; and
 - (ii) in the case of a married person, the maximum rate of benefit (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) payable under the social security law of New Zealand to a married person;
 - (c) in no case shall the rate of benefit exceed 100% of the maximum benefit rate as defined in subparagraph (b);
 - (d) except as provided in paragraph 2, no account shall be taken of any benefit that is payable under the social security law of Australia; and
 - (e) no account shall be taken of any benefit that is payable under the social security law of a third country if that person is a permanent resident of Australia.
2. The rate of invalid's benefit that a person who qualifies for an invalid's benefit under Article 6 shall be calculated under paragraph 1, but the amount the person is entitled to receive, shall not exceed:

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

Part III

Provisions Relating to Australian Benefits

Article 11—Residence or Presence in New Zealand

1. Where a person would not qualify for a benefit under the social security law of Australia or by virtue of this Agreement only because he or she was not an Australian resident and present in Australia on the date on which the claim for that benefit would be lodged but that person:
 - (a) is an Australian resident or a New Zealand resident; and
 - (b) is physically present in Australia, or in New Zealand;that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.
2. A claimant for an age pension must be at least 65 years of age to be able to obtain the benefit of this Article.

Article 12—Totalisation for Australia

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

then:

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

2. Where a person's period of working age residence in Australia and a period of working age residence in New Zealand coincide, the period of coincidence shall be taken into account once only by Australia for the purposes of this Article as a period as an Australian resident.
3. The minimum period of working age residence in Australia to be taken into account for the purposes of subparagraph 1(b) shall be 12 months, of which at least 6 months must be continuous.
4. No person shall be entitled to claim a disability support pension under this Agreement unless he or she has accumulated an aggregate of more than 10 years of residence in Australia and/or New Zealand.
5. A claimant for an age pension must be at least 65 years of age to be able to obtain the benefit of this Article.

Article 13—Calculation of Australian Benefits

1. Where an Australian benefit is payable to a person, whether by virtue of the Agreement or otherwise, the rate of that benefit shall be determined under the social security law of Australia but when assessing the income of that person, no New Zealand benefit paid to that person shall be regarded as income.
2. Subject to paragraph 3, where an Australian benefit is payable, by virtue of this Agreement or otherwise, to a person who is in Australia, the rate of that benefit shall be determined by:
 - (a) calculating that person's income according to the social security law of Australia but disregarding in that calculation the New Zealand benefit or benefits received by that person;
 - (b) deducting the amount of the New Zealand benefit or benefits received by that person from the maximum rate of that Australian benefit; and
 - (c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the social security law of Australia, using as the person's income, the amount calculated under subparagraph (a).
3. Where a member of a couple is, or both that person and his or her partner are, entitled to a New Zealand benefit or benefits, each of them shall be deemed, for the purpose of this Article and for the social security law of Australia, to receive one half of either the amount of that benefit or the total of both of those benefits, as the case may be.
4. (a) Where an age pension is payable, by virtue of this Agreement or otherwise, to a person who is in New Zealand and who has less than 10 years as a New Zealand resident, then the rate of that age pension shall be determined (subject to paragraph 1) in accordance with the following formula:

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

where,

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

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

$$A = \frac{W \times R}{540}$$

where,

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

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

$$A = \frac{L \times R}{N + L}$$

where,

- A = rate payable.
 L = period in months of working age residence in Australia between age 20 and the date of severe disablement with a minimum number of 12 months.
 N = period of working age residence in New Zealand between age 20 and the date of severe disablement.
 R = the rate that would have been payable if that person had been in Australia and was qualified under the social security law of Australia to receive that disability support pension.

6. Paragraphs 4, 5 and 8 do not apply to an Australian resident who was granted and received the relevant pension without use of the Agreement for a period of 26 weeks from departure from Australia.
7. For the purposes of:
 - (a) paragraph 2, where the pensioner is in Australia, but not a permanent resident;
 - (b) subparagraph (4)(a); and
 - (c) paragraph 5, where the pensioner has less than 10 years in New Zealand, any pension received from a third country will be disregarded in the assessment of the pension and directly deducted from the rate of Australian pension.
8. Subject to paragraph 1, where a carer payment is payable, by virtue of this Agreement or otherwise, to a person who is in New Zealand or to a person caring for a person who receives his or her disability support pension by virtue of this Agreement, the rate of that carer payment shall be the same proportion of the maximum carer payment as the proportion of the maximum disability support pension that is received by the person for whom the care is being given.

Part IV

Common Provisions on Eligibility

Article 14—Residence in Third Countries

1. A person who:
 - (a) is entitled to receive a benefit solely through the application of the totalising provisions of Article 8; and
 - (b) either:
 - (i) departs New Zealand with the intention of residing in a third country for a period which exceeds 26 weeks; or
 - (ii) resides in a third country for a period which exceeds 26 weeks;shall only be entitled to receive a benefit while outside Australia or New Zealand if he or she is entitled to receive that benefit under a reciprocal social security agreement that the Party paying that benefit has entered into with that third country.
2. Where a person, who is in receipt of an Australian benefit by virtue of this Agreement, goes to a third country that benefit shall continue to be payable for 26 weeks.

Article 15—Payment of Supplementary Benefits and Allowances

1. Where a New Zealand resident becomes entitled to receive a New Zealand benefit under Article 8, the competent institution of New Zealand shall also

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

Article 16—Residency Issues

1. Where there is doubt after having applied the definitions in Article 5 as to whether a person is a resident of Australia or New Zealand, the competent institutions of the Parties shall consult on the issue and shall decide in writing the country of residence of that person.
2. Upon the decision being made under paragraph 1, that person shall be deemed to be a resident of that country.
3. If the facts on which a decision was made under paragraph 1 change in regard to the person, the competent institution of a Party may initiate action under paragraph 1 on the basis that there is new doubt as to the residency of the person.

Part V

Common Provisions Relating to Benefit Payments

Article 17—Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Party in accordance with administrative arrangements made pursuant to Article 21 at any time after the Agreement enters into force.
2. For the purpose of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the competent institution of one Party shall be considered as the date of lodgement of that document with the competent institution of the other Party. The competent institution with which a claim, notice or appeal is lodged shall refer it without delay to the competent institution of the other Party.

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

Article 18—Exchange of Information

1. The competent authorities shall advise each other:
 - (a) of laws that amend, supplement or replace the legislation of their respective Parties for the application of this Agreement, promptly after the first-mentioned laws are made;
 - (b) directly of internal action to implement this Agreement and any administrative arrangements made for its implementation; and
 - (c) of any technical problems encountered when applying the provisions of this Agreement or of any administrative arrangements made for its implementation.
2. The competent institutions shall supply each other with any information in their possession that may assist with verification of the country or countries in which an applicant for benefit to which this Agreement applies has acquired periods of working age residence and each competent institution shall supply that information in the manner specified in the administrative arrangements made pursuant to Article 21.
3. The competent institutions shall communicate to each other, as soon as possible, in relation to each benefit granted by the other Party, all information in its possession required:
 - (a) to verify that the person in receipt of that benefit is eligible to receive it under the social security law of the Party granting the benefit;
 - (b) to verify the amount of benefit payable; and
 - (c) for the recovery of any social security debt under this Agreement.
4. The competent institutions shall, on request, assist each other in relation to the implementation of Agreements on social security entered into by either of the Parties with third countries, to the extent and in the circumstances specified in the administrative arrangements made pursuant to Article 21.
5. The assistance referred to in paragraphs 2 to 4 shall be provided free of charge except where specified in the administrative arrangements made pursuant to Article 21.
6. Unless disclosure is required and is permitted under the laws of both Parties, any information about an individual that is transmitted in accordance with this Agreement to a competent authority or a competent institution by the competent authority or competent institution of the other Party is confidential and shall be used only for the purposes of implementing this Agreement and the social security law of either Party.

7. Where an exchange of information authorised under this Article is of a kind to which Part X of the *New Zealand Privacy Act 1993* or the *Privacy Act 1988 of Australia* would apply, the administrative arrangements shall:
 - (a) include provisions that ensure, in relation to New Zealand, that the safeguards that are required under New Zealand privacy laws in information matching agreements are complied with and that the arrangements are consistent with the information matching rules under New Zealand privacy laws;
 - (b) include provisions that ensure, in relation to Australia, that the safeguards that are required under Australian privacy laws in information matching agreements are complied with and that the arrangements are consistent with the information matching rules under Australian privacy laws; and
 - (c) list the items of information that each Party may request under this Article.
8. Any information transmitted in accordance with this Agreement to a competent institution shall be protected in the same manner as information obtained under the social security law of the receiving Party.
9. No term in this Article shall affect the obligations of the Parties under Article 25.

Article 19—Recovery of Overpayments

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

The amount that would not have been paid by Australia had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period shall be a debt due by that person to Australia.
2. A reference to a benefit in this Article, in relation to Australia, means a pension, benefit or allowance that is payable under the Acts forming the social security law of Australia as amended from time to time, and in relation to New Zealand means any pension, benefit, allowance or advance made by a competent institution including overpayments which arise because of the payment of Australian and New Zealand benefits.

Recovery from arrears

3. Where:

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

then:

- (i) That other Party shall, if the first-mentioned Party so requests, pay the amount of those arrears to the first-mentioned Party; and
- (ii) the first-mentioned Party may deduct from the amount of those arrears any excess amount of the benefit paid by it and shall pay any balance remaining to that person.

Recovery by instalment or lump sum

- 4. Where an amount paid by one of the Parties to a person in respect of a benefit exceeds the amount, if any, that was properly payable, whether by virtue of this Agreement or otherwise, in respect of that benefit, the competent institution of that other Party shall, if requested by the other competent institution to do so, and in accordance with this Article, deduct amounts totalling the excess payment referred to from the regular payments due in respect of the last-mentioned benefit.
- 5. The amount of an excess payment referred to in paragraph 3 shall be the amount determined by the competent institution of the Party by whom the excess payment was made.
- 6. The rate of deductions to be made in accordance with paragraph 3 from the amount due in respect of a benefit, and any incidental or related matters, shall be determined by the competent institution of the Party to whom the debt relates, in accordance with the social security law or administrative practice of that Party.
- 7. The competent institution that is making deductions or is about to make deductions under paragraph 4 shall also accept any regular or lump sum payment from the person concerned for the purposes of repaying the excess benefit received by that person.

Restitution

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

Article 20—Limitations

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

Article 21—Administrative Arrangements

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

Article 22—Currency

1. Payments under this Agreement may be made validly in the currency of the Party making the payment.
2. Money transfers made under this Agreement shall be made in accordance with any relevant arrangements in effect between the Parties at the time of transfer.
3. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.
4. A Party that imposes restrictions described in paragraph 3 shall inform the other Party of those restrictions within one calendar month of their imposition and shall adopt the measures described in paragraph 3 within three months of the imposition of those restrictions. If the other Party is not so informed, or if the necessary measures are not adopted within the set time, the other Party may treat such a failure as a material breach of the Agreement and as sufficient justification for termination or suspension of the Agreement between the Parties.
5. A benefit payable by a Party by virtue of this Agreement to a person outside the territory of that Party shall be paid without deduction for government administrative fees and charges for processing and paying that benefit.

Part VI**Miscellaneous Provisions****Article 23—Exchange Rates**

Where the rate of benefit a person is entitled to receive under this Agreement, is affected by a benefit payable by the other Party or by a social security pension pay-

able by a third country, the competent institutions shall use common exchange rates as prescribed in administrative arrangements made pursuant to Article 21 to calculate the value of those benefits or pensions.

Article 24—Settlement of Disputes

1. The competent authorities of the Parties shall settle, to the extent possible, any disputes that arise in interpreting or applying the provisions of this Agreement having regard to its spirit and fundamental principles.
2. The Parties shall consult promptly at the request of either concerning matters which have not been settled by the competent authorities in accordance with paragraph 1.
3. Any dispute between the Parties concerning the interpretation or application of the provisions of this Agreement which has not been settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration by an arbitral tribunal.
4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators shall appoint a third who shall act as President provided that if the two arbitrators fail to agree the President of the International Court of Justice shall be requested to appoint the President.
5. The arbitral tribunal shall determine its own procedures.
6. The decision of the arbitral tribunal shall be final and binding.

Article 25—Review of the Agreement

1. The Parties may agree at any time to review any of the provisions of this Agreement.
2. If a Party wishes to amend, supplement or replace its legislation, in a way that would affect the provisions of this Agreement, it shall, prior to enactment of any such legislation, seek the agreement of the other Party to such amendment of this Agreement, as may be necessary to maintain consistency between that Party's legislation and the provisions of this Agreement.
3. If a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than six months after that request was made.

Article 26—Transitional Provisions

1. Subject to this Agreement and to Article 22(3) of the 1994 Agreement, when this Agreement comes into force pursuant to Article 28, the 1994 Agreement shall terminate.
2. Part II, Part III and Part IV of this Agreement shall apply to any person who claims a benefit after 1 July 2002. Any person who, at the date of termination of the 1994 Agreement is in receipt of a benefit under the 1994 Agreement or who has lodged a claim for, and would be entitled to receive a benefit under the

1994 Agreement, shall continue to be entitled to receive that benefit in accordance with the provisions of Part II of the 1994 Agreement, as if the 1994 Agreement remained in force, for so long as that person remains continuously in receipt of a benefit under the 1994 Agreement.

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

Article 27—Reimbursements under the Transitional Provisions

1. Except as provided in paragraph 2, the Government of New Zealand shall continue to reimburse the Government of Australia for benefits for which it agreed to reimburse the Government of Australia under the 1994 Agreement and which were reimbursable at 1 July 2002 by payment of the following amounts in Australian dollars which will be adjusted annually for movements in the CPI:
 - (a) in the financial year beginning 1 July 2002, \$101.74 million;
 - (b) in the financial year beginning 1 July 2003, \$86.55 million;
 - (c) in the financial year beginning 1 July 2004, \$76.11 million;
 - (d) in the financial year beginning 1 July 2005, \$66.77 million;
 - (e) in the financial year beginning 1 July 2006, \$58.39 million;
 - (f) in the financial year beginning 1 July 2007, \$50.90 million;
 - (g) in the financial year beginning 1 July 2008, \$44.19 million;
 - (h) in the financial year beginning 1 July 2009, \$38.21 million;
 - (i) in the financial year beginning 1 July 2010, \$32.90 million;
 - (j) in the financial year beginning 1 July 2011, \$28.19 million;
 - (k) in the financial year beginning 1 July 2012, \$17.35 million;
 - (l) in the financial year beginning 1 July 2013, \$14.44 million;
 - (m) in the financial year beginning 1 July 2014, \$11.92 million;
 - (n) in the financial year beginning 1 July 2015, \$9.75 million;
 - (o) in the financial year beginning 1 July 2016, \$7.89 million;
 - (p) in the financial year beginning 1 July 2017, \$6.30 million;
 - (q) in the financial year beginning 1 July 2018, \$4.96 million;
 - (r) in the financial year beginning 1 July 2019, \$3.86 million;
 - (s) in the financial year beginning 1 July 2020, \$2.94 million;
 - (t) in the financial year beginning 1 July 2021, \$2.21 million; and
 - (u) in the financial year beginning 1 July 2022, \$1.63 million.

2. In the first financial year that the reimbursable amount, as adjusted for movements in the CPI, is less than 10 million Australian dollars, the Government of New Zealand shall reimburse the Government of Australia that adjusted reimbursable amount for that year together with an amount equal to the aggregate reimbursable amounts for the next 5 financial years (but with no adjustment for movements in the CPI for those 5 financial years) and no further amount shall be reimbursable under this Article.
3. For each financial year the reimbursable amount, or in the financial year referred to in paragraph 2, the total amount payable shall be paid, in arrears, in equal quarterly instalments on 1 October, 1 January, 1 April of that financial year and 1 July of the next financial year or, if those dates are not banking days, on the first banking day thereafter.

Article 28—Entry into Force and Termination

1. The Agreement shall enter into force on 1 July 2002 provided that the Parties have notified each other by notes exchanged through the diplomatic channel that all matters necessary to give effect to this Agreement have been completed; otherwise it shall come into force on the first day of the second month following the date of the last such notification.
2. Subject to paragraph 3, this Agreement shall remain in force until either:
 - (a) the expiration of 12 months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of either Party to terminate the Agreement; or
 - (b) the date of entry into force of a later treaty between the Parties relating to the same subject matter as this Agreement, and which the Parties intend shall govern that same subject matter in place of this Agreement.
3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who by virtue of this Agreement:
 - (a) at the date of termination, are in receipt of benefits; or
 - (b) prior to the expiry of the period referred to in subparagraph (a), have lodged claims for, and would be entitled to receive, benefits.

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

DONE in two copies in the English language at Canberra
on this twenty eighth day of March 2001.

For the Government
of New Zealand

For the Government
of Australia

Schedule 2
Exchange of notes amending the Agreement on Social Security
between the Government of New Zealand and the Government of
Australia, done at Canberra on 28 March 2001

cl 3(2)

New Zealand initiating note

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

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

- 1 Article 2 of the Agreement is amended by inserting the words “the *New Zealand Superannuation Act 2001*,” after “New Zealand:” in paragraph 1(b).
- 2 Article 6 of the Agreement is amended by renumbering paragraph 5 as paragraph 7, and by inserting new paragraphs 5 and 6 as follows:
 - “5. A New Zealand benefit which would otherwise be payable to a person in New Zealand shall continue to be payable for up to 26 weeks after the person’s departure from New Zealand if that person departs New Zealand to reside in Australia and:
 - (a) applies to receive New Zealand superannuation under the Agreement within 26 weeks of arrival in Australia; or
 - (b) applies to receive an invalid’s benefit under the Agreement within 4 weeks of arrival in Australia.
 - “6. If an application referred to in paragraph 5 is granted under the Agreement, the rate of the New Zealand benefit payable after the date of grant shall be the rate payable in accordance with the Agreement. If the application is declined, the New Zealand benefit first referred to in that paragraph shall only be payable in Australia after the date of that decision if the person is entitled to receive that payment under New Zealand domestic law.”
- 3 Article 8 of the Agreement is amended by deleting paragraph 4, and substituting the following paragraph:
 - “4. The minimum period in Australia to be taken into account for the purposes of:
 - (a) paragraph 1, shall be 12 months working age residence, of which at least 6 months must be continuous; and
 - (b) paragraph 2, shall be 12 months residence, of which at least 6 months must be continuous.”

- 4 Article 9 of the Agreement is amended by deleting paragraph 2; and renumbering paragraphs 3 and 4 as 2 and 3 respectively.
- 5 Article 11 of the Agreement is amended by adding as paragraphs 3 and 4 the following paragraphs:
- “3. If a person applies for a carer payment under this Agreement, references to Australia in the provisions of the social security law of Australia relating to qualification for carer payment shall be read also as references to New Zealand.
- “4. If a person is qualified for a carer payment under this Agreement, that person can receive that payment if that person has an aggregate period of residence of at least 2 years in Australia and/or New Zealand.”
- 6 Article 12 of the Agreement is amended by deleting paragraph 3, and substituting the following paragraph:
- “3. The minimum period of Australian working age residence to be taken into account for the purposes of paragraph 1(b) shall be as follows:
- (a) for the purposes of an Australian benefit payable to a person residing outside Australia, the minimum period shall be one year of which at least 6 months must be continuous; but
- (b) for the purposes of an Australian benefit payable to an Australian resident, there will be no minimum period.”
- 7 Article 17 of the Agreement is amended by adding a new paragraph that shall read as follows:
- “4. After the entry into force of this Agreement, a claim by a person for a benefit under the social security law of one Party shall be deemed to be a claim for the corresponding benefit under the social security law of the other Party provided that:
- (a) if the claimant is applying for an age pension or New Zealand superannuation, he or she is over 65 years of age;
- (b) the claimant:
- (i) requests that the claim be considered an application under the social security law of the other Party; or
- (ii) provides information at the time of the application indicating that he or she has completed a period of working age residence in the other country; and
- (c) the competent institution receiving the claim forwards the claim for that corresponding benefit to the other competent institution within three months of receiving that claim.”
- 8 Article 18 of the Agreement is amended:
- (a) by inserting in paragraph 2, after the word “possession”, the words “or that they are lawfully able to obtain”;
- (b) by adding to the end of paragraph 2 the words “The information supplied may include information that identifies any person, including the per-

son's name, date of birth, sex, passport number, country of citizenship, the date or dates on which the person arrived in or departed from Australia or New Zealand, and information identifying the aircraft or ship on which he or she arrived or departed, as the case may be.”;

- (c) by inserting in paragraph 3, after the word “possession”, the words “or that it is lawfully able to obtain, that is”;
- (d) by inserting in paragraph 5, after the word “provided”, the words “subject to the terms and conditions set out in Part B of the Schedule of this Agreement, and”;
- (e) by inserting in paragraph 5, after the words “specified in the”, the words “Schedule or in the”;
- (f) by inserting in paragraph 6, after the word “Parties,”, the words “then, except as provided in Part B of the Schedule of this Agreement,”;
- (g) by inserting in paragraph 7, after the word “shall”, the words “, in accordance with Part B of the Schedule of this Agreement,”; and
- (h) by omitting from paragraph 9 the expression “25”, and substituting the expression “24”.

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

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

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

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

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

“Schedule

Part A

Terms and conditions for recovery of social security debts

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

- (a) assistance to recover any social security debt of a party may be provided by the other party only in respect of a debt:
 - (i) that has been found or determined to be owing in the country concerned by a court or tribunal having jurisdiction in the matter, or by a person, body, or organisation in that country acting administratively within the terms of his, her, or its lawful authorisation; and
 - (ii) in respect of which any right of review or appeal of the determination of the debt, under the law under which the debt was determined (other than

- a right of judicial review or complaint under laws relating to administrative decisions generally, or under human rights laws),:
- (A) has been exhausted or has expired; or
 - (B) if there is no time limit for the exercise of any such right, has not been exercised, or has been exercised and the review or appeal has been finally determined; and
- (iii) that may be lawfully recovered under the laws of that country; and
 - (iv) that was first found or determined to be owing less than 5 years prior to the date that the request for assistance is made, except as provided in clause 2;
- (b) when providing assistance to recover any social security debt of a party, the party giving the assistance is not required to:
 - (i) give priority to the recovery of social security debts of the other party; and
 - (ii) take any measures for recovery not provided for under the laws relating to the recovery of debts of that party;
 - (c) a party may not seek to recover a social security debt by imprisonment of the individual by whom it is owed or of any other individual;
 - (d) any recovery of a social security debt of a deceased individual is limited to the value of that individual's estate;
 - (e) any institution, court, or tribunal involved in the recovery of a social security debt may defer recovery of the debt, or may order or arrange for the debt to be paid in instalments, if:
 - (i) the institution, court, or tribunal has the power to do so; and
 - (ii) it is its normal practice to do so;
 - (f) a party may give assistance only in respect of a social security debt that the requesting institution has certified is of a kind described in subparagraphs (i) to (iv) of paragraph (a);
 - (g) the party requesting assistance to recover a social security debt must pay the costs of the other party of recovering the debt, including court costs or other fees payable under the laws of that party. For the purposes of this paragraph, "costs of the other party" refer only to costs incurred (such as solicitor's fees) if court action is taken to recover the debt and do not include the administrative costs of a party.
- 2 For the purpose of clause 1(a)(ii), a right of review or appeal under the law under which a debt was determined has expired:
- (a) if the right has not been exercised within the time limit provided for its exercise; and
 - (b) irrespective of whether the court or tribunal or body or person that would have jurisdiction in respect of the review or appeal, or any other person, retains a discretion (however expressed in that law) to allow the right of review or appeal to be exercised after that time.

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

Part B

Terms and conditions for exchange of information for social security purposes

- 1 The terms and conditions referred to in Article 18 of the Agreement are—
- (a) a request for information relating to an individual may be made only for social security purposes;
 - (b) the requested institution of a party may supply to the requesting institution such information on the person to whom the request relates as it holds or is lawfully able to obtain;
 - (c) the requesting institution of a party (the “requesting party”) to whom information is supplied by the requested institution of the other party may supply that information to the taxation authorities of the requesting party for either or both of the following purposes:
 - (i) making an assessment of the tax due by any person under the laws of the requesting party relating to taxation;
 - (ii) detecting tax fraud or tax evasion under the laws of the requesting party;
 - (d) every request for and supply of information made by and to the competent institutions of the parties must be made in terms of an agreement between the competent institutions of the parties that:
 - (i) specifies the types of information that the competent institutions may supply to each other; and
 - (ii) limits the supply of information to the types of information specified; and
 - (iii) subject to subparagraph (iv), in relation to New Zealand, contains, with all necessary modifications, the safeguards required to be set out in an information matching agreement within the meaning of section 99 of the Privacy Act 1993; and
 - (iv) in relation to New Zealand, requires the information matching rules set out in clause 4 of the Schedule 4 of the Privacy Act 1993, with all necessary modifications, to be applied; and
 - (v) in relation to New Zealand, has been agreed to by the Privacy Commissioner under the Privacy Act 1993, the Commissioner having had regard to the information matching guidelines in section 98 of that Act;
 - (e) subject to paragraphs (b) and (c), any information supplied by a party to the other party must be subject to the same privacy protections as any other personal information obtained under the social security laws of the other party;
 - (f) no party that receives, under the Agreement, personal information about any individual from the competent institution of the other party may supply that information to any other country without the prior written consent of that competent institution or the individual concerned;

- (g) a party must supply the competent institution of the other party with any information required by that institution to answer any questions or to make any report or return required by a person or body authorised to monitor compliance with that party's privacy laws.
- 2 In relation to New Zealand, section 99(4) of the Privacy Act 1993 applies, with any necessary modifications, to an agreement between the competent institutions of the parties under clause 1(d)."

The New Zealand High Commission has the honour to propose that, if the foregoing is acceptable to the Government of Australia, this note, and the Department's note in reply, shall together constitute an Exchange of Notes Amending the Agreement, which shall enter into force on the date on which the Agreement enters into force.

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

New Zealand High Commission

Canberra

20 February 2002

Australian note in reply

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

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

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

- 1 Article 2 of the Agreement is amended by inserting the words "the *New Zealand Superannuation Act 2001*," after "New Zealand:" in paragraph 1(b).
- 2 Article 6 of the Agreement is amended by renumbering paragraph 5 as paragraph 7, and by inserting new paragraphs 5 and 6 as follows:
 - "5. A New Zealand benefit which would otherwise be payable to a person in New Zealand shall continue to be payable for up to 26 weeks after the person's departure from New Zealand if that person departs New Zealand to reside in Australia and:
 - (a) applies to receive New Zealand superannuation under the Agreement within 26 weeks of arrival in Australia; or

- (b) applies to receive an invalid's benefit under the Agreement within 4 weeks of arrival in Australia.
- “6. If an application referred to in paragraph 5 is granted under the Agreement, the rate of the New Zealand benefit payable after the date of grant shall be the rate payable in accordance with the Agreement. If the application is declined, the New Zealand benefit first referred to in that paragraph shall only be payable in Australia after the date of that decision if the person is entitled to receive that payment under New Zealand domestic law.”
- 3 Article 8 of the Agreement is amended by deleting paragraph 4, and substituting the following paragraph:
 - “4. The minimum period in Australia to be taken into account for the purposes of:
 - (a) paragraph 1, shall be 12 months working age residence, of which at least 6 months must be continuous; and
 - (b) paragraph 2, shall be 12 months residence, of which at least 6 months must be continuous.”
- 4 Article 9 of the Agreement is amended by deleting paragraph 2; and renumbering paragraphs 3 and 4 as 2 and 3 respectively.
- 5 Article 11 of the Agreement is amended by adding as paragraphs 3 and 4 the following paragraphs:
 - “3. If a person applies for a carer payment under this Agreement, references to Australia in the provisions of the social security law of Australia relating to qualification for carer payment shall be read also as references to New Zealand.
 - “4. If a person is qualified for a carer payment under this Agreement, that person can receive that payment if that person has an aggregate period of residence of at least 2 years in Australia and/or New Zealand.”
- 6 Article 12 of the Agreement is amended by deleting paragraph 3, and substituting the following paragraph:
 - “3. The minimum period of Australian working age residence to be taken into account for the purposes of paragraph 1(b) shall be as follows:
 - (a) for the purposes of an Australian benefit payable to a person residing outside Australia, the minimum period shall be one year of which at least 6 months must be continuous; but
 - (b) for the purposes of an Australian benefit payable to an Australian resident, there will be no minimum period.”
- 7 Article 17 of the Agreement is amended by adding a new paragraph that shall read as follows:
 - “4. After the entry into force of this Agreement, a claim by a person for a benefit under the social security law of one Party shall be deemed to be a claim for the corresponding benefit under the social security law of the other Party provided that:
 - (a) if the claimant is applying for an age pension or New Zealand superannuation, he or she is over 65 years of age;

- (b) the claimant:
 - (i) requests that the claim be considered an application under the social security law of the other Party; or
 - (ii) provides information at the time of the application indicating that he or she has completed a period of working age residence in the other country; and
 - (c) the competent institution receiving the claim forwards the claim for that corresponding benefit to the other competent institution within three months of receiving that claim.”
- 8 Article 18 of the Agreement is amended:
- (a) by inserting in paragraph 2, after the word “possession”, the words “or that they are lawfully able to obtain”;
 - (b) by adding to the end of paragraph 2 the words “The information supplied may include information that identifies any person, including the person’s name, date of birth, sex, passport number, country of citizenship, the date or dates on which the person arrived in or departed from Australia or New Zealand, and information identifying the aircraft or ship on which he or she arrived or departed, as the case may be.”;
 - (c) by inserting in paragraph 3, after the word “possession”, the words “or that it is lawfully able to obtain, that is”;
 - (d) by inserting in paragraph 5, after the word “provided”, the words “subject to the terms and conditions set out in Part B of the Schedule of this Agreement, and”;
 - (e) by inserting in paragraph 5, after the words “specified in”, the words “the Schedule or in the”;
 - (f) by inserting in paragraph 6, after the word “Parties,”, the words “then, except as provided in Part B of the Schedule of this Agreement,”;
 - (g) by inserting in paragraph 7, after the word “shall”, the words “, in accordance with Part B of the Schedule of this Agreement,”; and
 - (h) by omitting from paragraph 9 the expression “25”, and substituting the expression “24”.
- 9 Article 19 of the Agreement is amended by adding the following paragraph:
- “9. Recovery of overpayments by either Party under this Agreement shall be subject to the terms and conditions set out in Part A of the Schedule of this Agreement.”
- 10 Article 23 of the Agreement is deleted and no substitution for it is made; and the subsequent Articles 24 to 28 are renumbered as 23 to 27.
- 11 Article 25 of the Agreement (as renumbered) is amended by deleting from paragraph 1 the expression “28”, and substituting the expression “27”.

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

“Schedule

Part A

Terms and conditions for recovery of social security debts

- 1 The terms and conditions referred to in Article 19 of the Agreement are:
- (a) assistance to recover any social security debt of a party may be provided by the other party only in respect of a debt:
 - (i) that has been found or determined to be owing in the country concerned by a court or tribunal having jurisdiction in the matter, or by a person, body, or organisation in that country acting administratively within the terms of his, her, or its lawful authorisation; and
 - (ii) in respect of which any right of review or appeal of the determination of the debt, under the law under which the debt was determined (other than a right of judicial review or complaint under laws relating to administrative decisions generally, or under human rights laws),:
 - (A) has been exhausted or has expired; or
 - (B) if there is no time limit for the exercise of any such right, has not been exercised, or has been exercised and the review or appeal has been finally determined; and
 - (iii) that may be lawfully recovered under the laws of that country; and
 - (iv) that was first found or determined to be owing less than 5 years prior to the date that the request for assistance is made, except as provided in clause 2;
 - (b) when providing assistance to recover any social security debt of a party, the party giving the assistance is not required to:
 - (i) give priority to the recovery of social security debts of the other party; and
 - (ii) take any measures for recovery not provided for under the laws relating to the recovery of debts of that party;
 - (c) a party may not seek to recover a social security debt by imprisonment of the individual by whom it is owed or of any other individual;
 - (d) any recovery of a social security debt of a deceased individual is limited to the value of that individual’s estate;
 - (e) any institution, court, or tribunal involved in the recovery of a social security debt may defer recovery of the debt, or may order or arrange for the debt to be paid in instalments, if:
 - (i) the institution, court, or tribunal has the power to do so; and
 - (ii) it is its normal practice to do so;
 - (f) a party may give assistance only in respect of a social security debt that the requesting institution has certified is of a kind described in subparagraphs (i) to (iv) of paragraph (a);

- (g) the party requesting assistance to recover a social security debt must pay the costs of the other party of recovering the debt, including court costs or other fees payable under the laws of that party. For the purposes of this paragraph, “costs of the other party” refer only to costs incurred (such as solicitor’s fees) if court action is taken to recover the debt and do not include the administrative costs of a party.
- 2 For the purpose of clause 1(a)(ii), a right of review or appeal under the law under which a debt was determined has expired:
- (a) if the right has not been exercised within the time limit provided for its exercise; and
- (b) irrespective of whether the court or tribunal or body or person that would have jurisdiction in respect of the review or appeal, or any other person, retains a discretion (however expressed in that law) to allow the right of review or appeal to be exercised after that time.
- 3 Where any institution, court, or tribunal defers the recovery of a social security debt, or orders or arranges for a social security debt to be paid by instalments, the 5-year period referred to in clause 1(a)(iv) is extended by the period of deferral or, as the case requires, the period over which the debt is to be paid by instalments.

Part B

Terms and conditions for exchange of information for social security purposes

- 1 The terms and conditions referred to in Article 18 of the Agreement are—
- (a) a request for information relating to an individual may be made only for social security purposes;
- (b) the requested institution of a party may supply to the requesting institution such information on the person to whom the request relates as it holds or is lawfully able to obtain;
- (c) the requesting institution of a party (the “requesting party”) to whom information is supplied by the requested institution of the other party may supply that information to the taxation authorities of the requesting party for either or both of the following purposes:
- (i) making an assessment of the tax due by any person under the laws of the requesting party relating to taxation;
- (ii) detecting tax fraud or tax evasion under the laws of the requesting party;
- (d) every request for and supply of information made by and to the competent institutions of the parties must be made in terms of an agreement between the competent institutions of the parties that:
- (i) specifies the types of information that the competent institutions may supply to each other; and
- (ii) limits the supply of information to the types of information specified; and
- (iii) subject to subparagraph (iv), in relation to New Zealand, contains, with all necessary modifications, the safeguards required to be set out in an information matching agreement within the meaning of section 99 of the Privacy Act 1993; and

- (iv) in relation to New Zealand, requires the information matching rules set out in clause 4 of the Schedule 4 of the Privacy Act 1993, with all necessary modifications, to be applied; and
 - (v) in relation to New Zealand, has been agreed to by the Privacy Commissioner under the Privacy Act 1993, the Commissioner having had regard to the information matching guidelines in section 98 of that Act;
 - (e) subject to paragraphs (b) and (c), any information supplied by a party to the other party must be subject to the same privacy protections as any other personal information obtained under the social security laws of the other party;
 - (f) no party that receives, under the Agreement, personal information about any individual from the competent institution of the other party may supply that information to any other country without the prior written consent of that competent institution or the individual concerned;
 - (g) a party must supply the competent institution of the other party with any information required by that institution to answer any questions or to make any report or return required by a person or body authorised to monitor compliance with that party's privacy laws.
- 2 In relation to New Zealand, section 99(4) of the Privacy Act 1993 applies, with any necessary modifications, to an agreement between the competent institutions of the parties under clause 1(d)."

The New Zealand High Commission has the honour to propose that, if the foregoing is acceptable to the Government of Australia, this note, and the Department's note in reply, shall together constitute an Exchange of Notes Amending the Agreement, which shall enter into force on the date on which the Agreement enters into force.

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

New Zealand High Commission
Canberra

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

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

Canberra

21 February 2002

Diane Wilderspin,
Acting for Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 16 May 2002.

Reprints notes

1 *General*

This is a reprint of the Social Welfare (Reciprocity with Australia) Order 2002 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Social Welfare (Reciprocity with Australia) Order 2017 (LI 2017/86): clause 6

Veterans' Support Act 2014 (2014 No 56): section 278

Social Security (Benefit Categories and Work Focus) Amendment Act 2013 (2013 No 13): section 97

New Zealand Superannuation and Retirement Income Amendment Act 2005 (2005 No 42): section 9(2)

War Pensions Amendment Act 2003 (2003 No 18): section 12(2)