

Social Security (International Agreements) Act 1999

No. 173, 1999



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An Act to give effect to international social security agreements, and for related purposes

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Social Security (International Agreements) Act 1999

No. 173, 1999

An Act to give effect to international social security agreements, and for related purposes

[*Assented to 20 December 1999*]

The Parliament of Australia enacts:

## Part 1—Preliminary

##### 1 Short title

 This Act may be cited as the *Social Security (International Agreements) Act 1999*.

##### 2 Commencement

 This Act commences on 20 March 2000.

##### 3 Interpretation

 (1) Unless a contrary intention appears, an expression that is used in the *Social Security Act 1991* has the same meaning, when used in this Act, as in the *Social Security Act 1991*.

 (2) A reference in this Act (other than the reference in section 4) to the social security law is a reference to this Act, the *Social Security Act 1991* and any other Act that is expressed to form part of the social security law.

 (3) A reference in this Act to a provision of the social security law is a reference to a provision of this Act, the *Social Security Act 1991* or any other Act that is expressed to form part of the social security law.

##### 4 Social security law

 This Act forms part of the social security law.

## Part 2—International social security agreements

##### 5 Scheduled international social security agreements

 (1) For the purposes of a provision of the social security law, an agreement is a scheduled international social security agreement if:

 (a) the agreement is between Australia and another country; and

 (b) the agreement relates to reciprocity in social security or superannuation matters; and

 (c) the text of the agreement is set out in a Schedule to this Act.

 (2) The reference in subsection (1) to a scheduled international social security agreement includes a reference to such an agreement as amended, or otherwise affected in its operation, by a further agreement or further agreements between Australia and the other country concerned.

##### 6 Overriding of social security law by scheduled international social security agreements

 (1) The provisions of a scheduled international social security agreement have effect despite anything in the social security law.

 (2) Subsection (1) applies to a provision of an agreement only in so far as the provision is in force and affects the operation of the social security law.

 (3) If:

 (a) immediately before he or she reaches pension age, a person is receiving a social security payment (other than age pension) solely because of the operation of a scheduled international social security agreement; and

 (b) on reaching pension age, the person becomes qualified for age pension because of the operation of paragraph 43(1)(c) of the *Social Security Act 1991*;

the age pension is taken to be payable to the person under the agreement referred to in paragraph (a).

##### 7 Amendment of Schedules by regulations

 (1) The regulations may make provision amending a Schedule to this Act so as to set out in the Schedule the text of an agreement (the ***amending agreement***) that amends, or otherwise affects the operation of, another agreement set out in the Schedule.

 (2) Regulations making provision by virtue of subsection (1) must not come into operation on a day earlier than the day on which the amending agreement comes into force for Australia.

##### 8 Addition of new scheduled international social security agreements

 (1) The regulations may add to this Act a Schedule setting out the terms of an agreement between Australia and another country if the agreement relates to reciprocity in social security or superannuation matters.

 (2) Regulations made by virtue of subsection (1) must not come into operation on a day earlier than the day on which the agreement concerned comes into operation for Australia.

##### 9 Repeal of Schedule

 The regulations may repeal a Schedule to this Act.

##### 10 Parenting payment claimed under agreement

 **(**1**)** If:

 (a) a scheduled international social security agreement authorises a person who is outside Australia to lodge a claim for parenting payment; and

 (b) the person, while outside Australia, lodges a claim for parenting payment; and

 (c) the person is not a member of a couple; and

 (d) the person would qualify for parenting payment but for the operation of:

 (i) paragraph 500(1)(b) or (c) of the *Social Security Act 1991*; or

 (ii) subparagraph 500(1)(d)(ii) of that Act to the extent that it requires a person to have been in Australia for the period specified in the subparagraph; or

 (iii) section 500F, 500G or 500H of that Act;

then:

 (e) the provisions referred to in paragraph (d) do not apply to the person; and

 (f) if parenting payment is payable to the person, it is taken to be payable to the person under the scheduled international social security agreement.

 **(**2**)** If:

 (a) a person who is in Australia lodges a claim for parenting payment; and

 (b) the person is not a member of a couple; and

 (c) the person would qualify for parenting payment under a scheduled international social security agreement but for the operation of subparagraph 500(1)(d)(ii) of the *Social Security Act 1991* to the extent it requires a person to have been in Australia for the period specified in the subparagraph;

then:

 (d) that requirement of subparagraph 500(1)(d)(ii) does not apply to the person; and

 (e) if parenting payment is payable to the person, it is taken to be payable to the person under the scheduled international social security agreement.

##### 11 Portability of international agreement pension or allowance

 A social security payment payable under a scheduled international social security agreement is not payable to a person for a period when the person is outside Australia unless the agreement provides that the pension or allowance is payable outside Australia.

##### 12 Rate of pension or allowance payable under agreement where rate to be determined under law of Australia

 (1) If:

 (a) a social security payment is payable to a person under a scheduled international social security agreement; and

 (b) the person is outside Australia; and

 (c) the agreement provides for the rate of the social security payment to be determined according to the law of Australia;

the rate of the social security payment is the person’s international agreement portability rate worked out in accordance with Part 3.

 (2) A reference in the agreement to a person’s period of residence in Australia is to be taken to be a reference to the period of the person’s Australian working life residence for the purposes of this Act.

## Part 3—Calculation of international agreement portability rates

### Division 1—Overall rate calculation process

##### 13 Overall calculation process

 A person’s international agreement portability rate is worked out as follows:

 (a) the period of the person’s Australian working life residence in Australia (the ***residence period***) is worked out according to Division 2;

 (b) the person’s residence factor is worked out according to Division 3;

 (c) the person’s notional agreement pension rate is worked out by calculating the rate that would be the person’s social security payment rate if this section did not apply to the person but taking into account section 14;

 (d) if the person’s notional agreement pension rate is nil, the international agreement portability rate is also nil;

 (e) if the person’s notional agreement pension rate is not nil, the rate at which family allowance would be payable to the person if the person were in Australia (the ***notional family allowance rate***) is worked out by adding:

 (i) the standard family allowance rate; and

 (ii) the guardian allowance;

 and subtracting the minimum standard family allowance rate;

 (f) the person’s total notional rate is worked out by adding the person’s notional agreement pension rate and the person’s notional family allowance rate;

 (g) the person’s international agreement portability rate is the result obtained by multiplying the person’s total notional rate by the person’s residence factor.

##### 14 Amounts to be treated as income

 (1) If a scheduled international social security agreement provides that certain amounts are to be treated as income of a person—those amounts are to be treated as income of the person for the purposes of this Part.

 (2) If a scheduled international social security agreement provides that certain amounts are to be treated as not being income of a person—those amounts are to be treated as not being income of the person for the purposes of this Part.

### Division 2—Australian working life residence

##### 15 Working life

 For the purposes of this Division, a person’s working life is the period beginning when the person turns 16 and ending when the person reaches pension age.

##### 16 Australian working life residence generally

 Subject to sections 17 to 22, a person’s period of Australian working life residence at a particular time is the number of months in the period, or the aggregate of the periods, during the person’s working life during which the person has, up to that time, been an Australian resident.

##### 17 Calculation of period of residence

 (1) If a person’s period of Australian working life residence would, apart from this subsection, be a number of whole months, the period is to be increased by one month.

 (2) If a person’s period of Australian working life residence would, apart from this subsection, be a number of whole months and a day or days, the period is to be increased so that it is equal to the number of months plus one month.

##### 18 Australian working life residence: age or disability support pensioner couple

 If:

 (a) a person is receiving an age or disability support pension; and

 (b) the person is a member of a couple; and

 (c) the person’s partner is receiving an age or disability support pension; and

 (d) the partner’s period of Australian working life residence is longer than the period that would be the person’s period of Australian working life residence under section 17;

the person’s period of Australian working life residence is to be equal to the partner’s period of Australian working life residence.

##### 19 Australian working life residence: member of former age or disability support pensioner couple

 If:

 (a) a person is receiving an age or disability support pension; and

 (b) the person is a member of a couple; and

 (c) the person ceases to be a member of a couple; and

 (d) immediately before the person ceases to be a member of a couple:

 (i) the person was receiving an age or disability support pension; and

 (ii) the partner was receiving an age or disability support pension; and

 (e) the partner’s period of Australian working life residence (immediately before the person ceases to be a member of a couple) is longer than the period that would now be the person’s period of Australian working life residence under section 17;

the person’s period of Australian working life residence is to be equal to the partner’s period of Australian working life residence (immediately before the person ceases to be a member of a couple).

##### 20 Australian working life residence: wife pensioner

 If a person is receiving a wife pension, the person’s period of Australian working life residence is equal to the period of Australian working life residence of the person’s partner.

##### 21 Australian working life residence: recipient of pension PP (single), bereavement allowance or widow B pension

 If:

 (a) a person is receiving a pension PP (single), bereavement allowance or widow B pension; and

 (b) the person became qualified for the pension or allowance because the person’s former partner died; and

 (c) the partner’s period of Australian working life residence (immediately before the partner’s death) is longer than the period that would now be the person’s period of Australian working life residence under section 17;

the person’s period of Australian working life residence is to be equal to the partner’s period of Australian working life residence (immediately before the partner’s death).

##### 22 Australian working life residence: carer payment

 If a person is receiving a carer payment, the person’s period of Australian working life residence is equal to the Australian working life residence of the person for whom the person is providing care.

### Division 3—Residence factor

##### 23 Residence factor: Australian working life residence of 25 years or more

 If a person’s period of Australian working life residence is 300 months (25 years) or more, the person’s residence factor is 1.

##### 24 Residence factor: Australian working life residence of less than 25 years

 If a person’s period of Australian working life residence is less than 300 months (25 years), the person’s residence factor is the fraction represented by:



## Part 4—Regulations

##### 25 Regulations

 The Governor‑General may make regulations prescribing matters:

 (a) required or permitted by this Act to be prescribed; or

 (b) necessary or convenient for carrying out or giving effect to this Act.

# Schedule 1—United Kingdom

Note: See section 5.

PART A

AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

The Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland,

Wishing to strengthen the existing friendly relations between the two countries;

Having established reciprocity in the field of social security by means of an Agreement signed by the Parties at Canberra on 29 January 1958, which was amended by a further Agreement signed at Canberra on 16 August 1962 and by other Agreements set out in Exchanges of Notes at Canberra on 6 March 1975 and at London on 29 and 31 December 1986;

Wishing to consolidate the above Agreements and their extensions and modifications into a single document; and

Wishing to extend and modify the scope of that reciprocity and to take account of changes in their legislation;

Have agreed as follows:

PART I—GENERAL PROVISIONs

ARTICLE 1

Definitions

1. For the purpose of this Agreement, unless the context otherwise requires:

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

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

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

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

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

 “employment” means employment as an employed person and the words “employ”, “employed” or “employer” shall be construed accordingly;

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

 “family allowance”, in relation to the United Kingdom, includes child benefit payable under the legislation of the United Kingdom, and, in relation to Australia means family allowance payable under the legislation of Australia;

 “former Agreement” means the Agreement on Social Security signed at Canberra on 29 January 1958, on behalf of the Parties, as amended by the Agreement on Social Security signed at Canberra on 16 August 1962 and by the Agreements set out in the Exchanges of Notes at Canberra on 6 March 1975 and at London on 29 and 31 December 1986;

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

 “gainfully occupied” means employed or self‑employed;

 “Guernsey” means the Islands of Guernsey, Alderney, Herm and Jethou;

 “income support” means income support payable under the legislation of Great Britain and Northern Ireland and supplementary benefit payable under the legislation of the Isle of Man;

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

 “means test” means any provision of the legislation of Australia which affects the payment or rate of a benefit on account of income or property;

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

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

 “self‑employed person” means a person who, in the applicable legislation, comes within the definition of a self‑employed earner or of a self‑employed person or is treated as such, and the words “person is self‑employed” shall be construed accordingly;

 “spouse carer’s pension” means a carer’s pension payable to a husband under the legislation of Australia;

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

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

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

2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning ascribed to it in the legislation of the Parties or, in the event of a conflict of meaning, by whichever of the legislation of the Parties is the more applicable to the circumstances of that person.

3. Any reference in this Agreement to “Article” means an Article of this Agreement, and any reference to a “paragraph” is a reference to a paragraph of the Article in which the reference is made, unless it is stated to the contrary.

ARTICLE 2

Scope of legislation

1. The provisions of this Agreement shall apply:

(a) in relation to the territory of the United Kingdom, to:

(i) the Social Security Acts 1975 to 1989 and the Social Security (Northern Ireland) Acts 1975 to 1989;

(ii) the Social Security Acts 1975 to 1989 (Acts of Parliament) as those Acts apply to the Isle of Man by virtue of Orders made, or having effect as if made, under the Social Security Act 1982 (an Act of Tynwald);

(iii) the Social Security (Jersey) Law, 1974;

(iv) the Social Insurance (Guernsey) Law, 1978;

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

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

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

2. Subject to the provisions of paragraphs (3) and (4) this Agreement shall apply also to any laws, orders and regulations which supersede, replace, amend, supplement or consolidate the legislation specified in paragraph (1).

3. This Agreement shall not affect any benefits payable under the legislation of either Party except in the manner set out in this Agreement.

4. This Agreement shall not apply to legislation on social security of the Institutions of the European Communities or to any convention or agreement on social security which either Party has concluded with a third party or to any laws, orders or regulations which amend the legislation specified in paragraph (1) for the purpose of giving effect to such a convention or agreement but shall not prevent either Party from taking into account under its legislation the provisions of any other convention or agreement which that Party has concluded with a third party.

5. Subject to the provisions of paragraph (2), this Agreement shall apply, unless the Parties agree otherwise, only to benefits described in the legislation specified in paragraph (1) at the date of coming into force of this Agreement and for which specific provision is made in this Agreement.

PART II—RETIREMENT PENSIONS, AGE PENSIONS AND BENEFITS FOR WIDOWS

ARTICLE 3

Retirement pensions

1. For the purpose of determining entitlement to retirement pension under the legislation of any part of the territory of the United Kingdom, a person who is permanently resident in that part of the territory shall be treated as if he or she, or, in the case of a claim made by a married woman or a widow by virtue of her husband’s insurance, her husband, had paid contributions under the legislation of that part of the territory for any period during which that person or that person’s husband, as the case may be:

(a) was resident in Australia and had attained the age of sixteen years; and

(b) being a woman had not attained the age of sixty years, or sixty‑five years in the case of Guernsey or Jersey, or being a man had not attained the age of sixty‑five years.

2. Where:

(a) a woman claiming retirement pension by virtue of her own insurance had been, but is not at the time of the claim, married, and chooses to have her former husband’s contributions taken into account for the purpose of her claim; and

(b) her former husband had been resident in Australia for any period between the ages of sixteen years and sixty‑five years;

 her former husband shall be treated, for the purpose of her claim, as if he had paid contributions under the legislation of the territory of the United Kingdom for any period referred to in sub‑paragraph (b).

3. Where a person who is permanently resident in any part of the territory of the United Kingdom was receiving an age pension, otherwise than by virtue of this Agreement or the former Agreement, at the time when he or she was last in Australia, and was over pensionable age at that time, he or she shall, if not qualified by virtue of the preceding paragraphs of this Article to receive retirement pension at the full standard rate under the legislation of that part of the territory of the United Kingdom, be treated as if he or she satisfied the contribution conditions for such a pension.

4. Any pension which is awarded by virtue of this Article shall continue to be payable if the pensioner ceases to be permanently resident in one part of the territory of the United Kingdom and becomes permanently resident in another part of the territory of the United Kingdom, and the competent authority of the latter part of the territory of the United Kingdom shall not determine entitlement under this Article.

5. Any pension which is awarded by virtue of this Article shall cease to be payable if the pensioner ceases to be permanently resident in the territory of the United Kingdom.

6. Where a person is entitled to receive a benefit by virtue of the provisions of this Article, the rate of benefit which he or she would otherwise be entitled to receive, but for this paragraph, shall be reduced by the amount of benefit which is payable by virtue of the legislation of Australia in accordance with the provisions of Article 8(7).

ARTICLE 4

Age pensions

1. Where a person is qualified to receive an age pension under the legislation of Australia otherwise than by virtue of the provisions of this Agreement, or the former Agreement, that pension shall be payable and the provisions of this Article shall not apply under that legislation.

2. For the purpose of any claim by a person to receive an age pension under the legislation of Australia, that person shall be treated as an Australian resident for any period prior to that person’s last arrival in Australia for which:

(a) that person; or

(b) if that person is a woman who is or has been married, her husband,

 paid contributions, or had earnings or contributions credited under the legislation of the United Kingdom.

3. For the purpose of applying paragraph (2), any period during which the person (being a woman) and her husband both paid contributions or had earnings or contributions credited to them shall be counted only once.

4. For the purpose of applying paragraph (2), a period when the person or, if the person is a woman who is or has been married, her husband paid contributions or had earnings or contributions credited, which coincided with a period in which that person was an Australian resident, shall be counted only once.

5. A person who receives from Australia a wife’s pension or a spouse carer’s pension by virtue of the fact that the spouse of that person receives an age pension by virtue of this Article, shall, for the purpose of this Agreement, be deemed to receive that pension by virtue of this Agreement.

ARTICLE 5

UK Benefits for Widows

1. For the purpose of determining entitlement to widow’s benefit under the legislation of any part of the territory of the United Kingdom, a widow who is permanently resident in that part of the territory shall be treated as if her husband had paid contributions under the legislation of that part of the territory for any period during which he was resident in Australia between the ages of sixteen years and sixty‑five years.

2. Where a widow who is permanently resident in any part of the territory of the United Kingdom was receiving a pension payable to widows under the legislation of Australia, otherwise than by virtue of this Agreement or the former Agreement, at the time when she was last in Australia, and is not qualified by virtue of paragraph (1) to receive widow’s allowance, widowed mother’s allowance or widow’s pension at the full standard rate under the legislation of that part of the territory of the United Kingdom where she is permanently resident, she shall be qualified under that legislation to receive at the full standard rate:

(a) widow’s allowance if she had been receiving a pension payable to widows under the legislation of Australia for less than one year in the case of Jersey and 26 weeks in the case of Guernsey; or

(b) widowed mother’s allowance if she is not qualified to receive widow’s allowance or if she has ceased to be qualified to receive widow’s allowance, and if she has a child in her family or if she has residing with her a person under the age of nineteen years or sixteen years in the case of Jersey or eighteen years in the case of Guernsey, and the pension payable to widows which she was receiving at the time when she was last in Australia was being paid to her on the basis that that child or person was her dependent child; or

(c) widow’s pension or retirement pension, as the case may require, if she is not qualified to receive widow’s allowance, or widowed mother’s allowance but had reached the age of fifty‑five years or forty years where that widow is permanently resident in Jersey or Guernsey, either before she last left Australia or when she ceased to be qualified to receive widow’s allowance or widowed mother’s allowance.

3. Any pension which is awarded by virtue of this Article shall continue to be payable if the pensioner ceases to be permanently resident in one part of the territory of the United Kingdom, and becomes permanently resident in another part of the territory of the United Kingdom, and the competent authority of the latter part of the territory of the United Kingdom shall not determine entitlement under this Article.

4. Any widow’s benefit which is awarded by virtue of this Article shall cease to be payable if the widow ceases to be permanently resident in the territory of the United Kingdom.

5. Where a person is entitled to receive a benefit by virtue of the provisions of this Article, the rate of benefit which she would otherwise be entitled to receive, but for this paragraph, shall be reduced by the amount of benefit which is payable by virtue of the legislation of Australia in accordance with the provisions of Article 8(7).

6. The provisions contained in this Article shall apply, in an equal and opposite way to widowed father’s allowance under the legislation of Jersey.

7. In the case of widows’ benefit payable under the legislation of Jersey, contribution credits shall only be awarded to widows permanently resident in Jersey.

8. In the case of widow’s benefit payable under the legislation of Guernsey:

(a) Class 3 contributions shall be credited only to a widow who is permanently resident in Guernsey;

(b) where Class 3 contributions have not been credited to a widow under the provisions of sub‑paragraph (a) above and the rate of old age pension which would be payable is less than the rate of widow’s benefit payable immediately before pension age is attained the rate of old age pension shall be adjusted so that it is equal to the rate of widow’s benefit which was payable, or which would be payable, if widow’s benefit were payable beyond pension age.

ARTICLE 6

UK Widowed Mother’s Allowance—Child in Australia

Where a woman would be qualified under the legislation of the United Kingdom, otherwise than by virtue of this Agreement or the former Agreement, to receive widowed mother’s allowance, including an allowance for a child, if her child were in the territory of the United Kingdom, she shall be qualified to receive that allowance for any period during which the child is in Australia.

ARTICLE 7

Australian Benefits for Widows

1. Where a person is qualified to receive a pension payable to widows under the legislation of Australia otherwise than by virtue of the provisions of this Agreement or the former Agreement, that pension shall be payable and the provisions of this Article shall not apply under that legislation.

2. For the purpose of any claim to receive a pension payable to widows under the legislation of Australia, a widow shall be treated as if she had been an Australian resident during any period for which her husband (or her last husband if more than one) had paid contributions or had had earnings or contributions credited to him under the legislation of the United Kingdom.

3. For the purpose of applying paragraph (2), any period when the widow was an Australian resident which coincided with a period when her husband (or her last husband if more than one) had paid contributions or had earnings or contributions credited to him shall be counted only once.

ARTICLE 8

Conversion of Australian Residence

1. For the purpose of calculating entitlement under the legislation of Great Britain, Northern Ireland or the Isle of Man, to any benefit in accordance with Articles 3 and 5, periods of residence in Australia before 6 April 1975 shall be treated as if they had been contribution or equivalent periods completed under that legislation.

2. For the purpose of calculating entitlement under the legislation of Great Britain, Northern Ireland or the Isle of Man, to any benefit in accordance with Articles 3 and 5, periods of residence in Australia on or after 6 April 1975 shall be treated as if a Class 3 contribution had been paid under that legislation for each week of residence.

3. Notwithstanding the provisions of paragraph (2), where residence in Australia during any tax year beginning on or after 6 April 1975 is for a period of less than the complete tax year then for each week of that period during which a person satisfies the competent authority that he or she was employed in Australia:

(a) for each week up to 5 April 1987, a person shall be treated as having paid a contribution as an employed earner on earnings equivalent to two‑thirds of that year’s upper earnings limit under the legislation of Great Britain, Northern Ireland or the Isle of Man;

(b) for each week commencing on or after 6 April 1987, a person shall be treated as having earnings on which primary Class 1 contributions have been paid under the legislation of Great Britain, Northern Ireland or the Isle of Man; these earnings shall be treated as equivalent to two‑thirds of that year’s upper earnings limit.

4. For the purpose of calculating entitlement under the legislation of Guernsey to any benefit in accordance with Articles 3 and 5, residence in Australia between the ages of sixteen years and sixty‑five years shall be treated as if a Class 3 contribution had been paid under the legislation of Guernsey for each week of residence.

5. For the purpose of calculating entitlement under the legislation of Jersey to any benefit in accordance with Articles 3 and 5, a person shall be treated:

(a) for each week completed during residence in Australia between the ages of sixteen years and sixty‑five years, being a week in the relevant quarter, as having paid contributions which derive a quarterly contribution factor of 0.077 for that quarter;

(b) for each week completed during residence in Australia between the ages of sixteen years and sixty‑five years, being a week in a relevant year, as having paid contributions which derive an annual contribution factor of 0.0193 for that year.

6. Where it is not possible to determine accurately the periods of time in which certain insurance periods were completed under the legislation of the United Kingdom, such periods shall be treated as if they did not overlap with periods of residence in Australia, and they shall be taken into account to the best advantage of the beneficiary.

7. For the purpose of calculating the rate of any benefit payable to a person under the legislation of the United Kingdom in accordance with the provisions of Articles 3, 5 or 13, the amount of any Australian benefit to be taken into account shall be initially the rate which that person is receiving at the date of entitlement to the United Kingdom benefit, and thereafter the rate which that person is receiving:

(a) on the date on which the latest uprating order, made by the Secretary of State for Social Security under section 63 of the Social Security Act 1986, came into effect; or

(b) in respect of Guernsey, on the date on which the latest Ordinance made under Section 19 of the Social Insurance (Guernsey) Law, 1978 came into effect; or

(c) in respect of Jersey, annually on 1 October in accordance with Article 13 of the Social Security (Jersey) Law 1974.

8. Notwithstanding the provisions of paragraph (7), where a person referred to in that paragraph has the rate of that Australian benefit reduced under the legislation of Australia upon being absent from Australia for 12 months, the benefit payable to that person under the legislation of the United Kingdom shall be adjusted upon that reduction occurring.

ARTICLE 9

Conversion of UK earnings factors or contribution factors

In order to convert to a period of contributions or credits for the purposes of Articles 4 and 7:

(a) the competent authority of Great Britain, Northern Ireland or the Isle of Man shall divide any earnings factor achieved in any tax year commencing after 5 April 1975 under its legislation, by that years lower earnings limit;

(b) the competent authority of Jersey shall multiply any contribution factor achieved by a person under its legislation:

(i) by thirteen in the case of a quarterly contribution factor; and

(ii) by fifty‑two in the case of an annual contribution factor.

The result shall be expressed as a whole number, any remaining fraction being ignored. The figure so calculated, subject to a maximum of the number of weeks during which the person was subject to that legislation in a quarter or in a year, shall be treated as representing the number of weeks of contributions or credits completed under that legislation.

PART III—UK FAMILY ALLOWANCE AND GUARDIAN’S ALLOWANCE

ARTICLE 10

Family Allowance

1. Where a person who has been resident in Australia becomes permanently resident in the territory of the United Kingdom, the period during which that person was resident in Australia shall be treated, for the purpose of a claim by the person for family allowance under the legislation of the United Kingdom, as a period during which that person was resident in that territory.

2. For the purpose of any claim to family allowance under the legislation of Guernsey, a person whose place of birth is in Australia shall be treated as if his or her place of birth was in Guernsey.

3. In the case of Jersey, family allowance shall only be paid in respect of a child who is ordinarily resident in Jersey.

ARTICLE 11

Guardian’s Allowance

1. Where a person who is permanently resident in the territory of the United Kingdom claims guardian’s allowance under the legislation of any part of that territory for a child who is permanently resident there, each complete week during which either parent of that child was resident in Australia after reaching sixteen years of age shall be treated as if that week had been a complete week of residence in that part of the territory of the United Kingdom or as if that parent had been an insured person under the legislation of Guernsey.

2. If either parent of a child referred to in paragraph (1) was born in Australia, that parent shall be treated as if he or she had been born in the United Kingdom.

PART IV—SICKNESS BENEFITS AND INVALIDITY BENEFITS

ARTICLE 12

Australian Sickness Benefit

Where a person who is temporarily absent from any part of the territory of the United Kingdom and who is legally in Australia claims sickness benefit under the legislation of Australia, that person shall, for the purpose of that claim, be deemed to be an Australian resident.

ARTICLE 13

UK Sickness Benefit and Invalidity Benefit

1. Where a person who is permanently resident in the territory of the United Kingdom and is ordinarily gainfully occupied, or would be, but for his or her incapacity for work, claims sickness or invalidity benefit under the legislation of the relevant part of that territory, then, for the purpose of calculating entitlement to those benefits, periods during which that person was in Australia shall be treated in accordance with the provisions of this Article.

2. For the purpose of calculating entitlement under the legislation of Great Britain, Northern Ireland or the Isle of Man to sickness or invalidity benefit:

(a) periods of gainful occupation completed in Australia before 6 April 1975 shall be treated as if they had been contribution or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man; and

(b) periods completed as a self‑employed person in Australia after 5 April 1975 shall be treated as if they have been contribution periods completed as a self‑employed person or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man.

3. For the purpose of calculating an earnings factor for assessing entitlement to sickness or invalidity benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man, a person shall be treated for each week beginning in a relevant tax year, during which he or she was an employed person in Australia, as follows:

(a) for each week commencing on or after 6 April 1975 and up to 5 April 1987, as having a contribution paid as an employed earner on earnings equivalent to two‑thirds of that year’s upper earnings limit; and

(b) for each week beginning in a relevant tax year commencing on or after 6 April 1987, as having earnings on which primary Class 1 contributions have been paid. These earnings shall be treated as equivalent to two‑thirds of that year’s upper earnings limit.

4. For the purpose of calculating entitlement under the legislation of Guernsey to sickness or invalidity benefit:

(a) periods during which a person was gainfully occupied as an employed person in Australia shall be treated as if they had been contribution or equivalent periods completed as an employed person under the legislation of Guernsey; and

(b) periods during which a person was gainfully occupied as a self‑employed person in Australia shall be treated as if they had been contribution or equivalent periods completed as a self‑employed person under the legislation of Guernsey.

5. For the purpose of calculating entitlement under the legislation of Jersey to any benefit in accordance with this Article, a person shall be treated:

(a) for each week completed during residence in Australia between the ages of sixteen years and sixty‑five years being a week in the relevant quarter, as having paid contributions which derive a quarterly contribution factor of 0.077 for that quarter;

(b) for each week completed during residence in Australia between the ages of sixteen years and sixty‑five years being a week in a relevant year, as having paid contributions which derive an annual contribution factor of 0.0193 for that year.

6. For the purpose of calculating entitlement under the legislation of the relevant part of the territory of the United Kingdom to sickness or invalidity benefit, a person shall be treated as if he or she had had earnings or contributions credited to him or her:

(a) as an employed person for any week during which he or she was in Australia and was unemployed and available for work or was incapable of work, if that week was part of a period during which he or she was or would ordinarily have been employed; and

(b) as a self‑employed person for any other week during which he or she was in Australia and was incapable of work, if that week was part of a period during which he or she was or would ordinarily have been self‑employed.

7. Where a person who is permanently resident in the territory of the United Kingdom was receiving a sickness benefit, an invalid pension, a sheltered employment allowance or a rehabilitation allowance under the legislation of Australia when he or she was last in Australia and is incapable of work at the time when he or she arrives in the territory of the United Kingdom, he or she shall be treated under the legislation of the United Kingdom as if, at that time and for so long as he or she continues from that time to be incapable of work, he or she satisfied the contribution conditions under which sickness or invalidity benefit is payable.

8. For the purpose of any claim to invalidity benefit under the legislation of the United Kingdom, any period in respect of which a person received sickness benefit or an invalid pension under the legislation of Australia shall be treated as if it were a period of entitlement to sickness benefit or invalidity benefit completed under the legislation of the United Kingdom.

9. Nothing in this Article shall diminish any right which a person has, apart from this Agreement, to receive sickness or invalidity benefit under the legislation of the United Kingdom.

10. Where a person is entitled to receive a benefit by virtue of the provisions of this Article, the rate of benefit which he or she would otherwise be entitled to receive, but for this paragraph, shall be reduced by the amount of benefit which is payable by virtue of the legislation of Australia in accordance with the provisions of Article 8(7).

PART V—UK UNEMPLOYMENT BENEFIT

ARTICLE 14

1. Where a person who is permanently resident in the territory of the United Kingdom except for Jersey claims unemployment benefit under the legislation of any part of that territory, then, for the purpose of calculating entitlement to that benefit, periods during which that person was in Australia shall be treated in accordance with the provisions of this Article.

2. Periods of gainful occupation as an employed person in Australia before 6 April 1975 shall be treated as if they had been contribution or equivalent periods completed under the legislation of Great Britain, Northern Ireland or the Isle of Man.

3. For the purpose of calculating an earnings factor for assessing entitlement to unemployment benefit under the legislation of Great Britain, Northern Ireland or the Isle of Man, a person shall be treated for each week beginning in a relevant tax year, during which he or she was an employed person in Australia, as follows:

(a) for each week commencing on or after 6 April 1975 and up to 5 April 1987, as having a contribution paid as an employed earner on earnings equivalent to two‑thirds of that year’s upper earnings limit; and

(b) for each week beginning in a relevant tax year commencing on or after 6 April 1987, as having earnings on which primary Class 1 contributions have been paid. These earnings shall be treated as equivalent to two‑thirds of that year’s upper earnings limit.

4. For the purpose of calculating entitlement to unemployment benefit under the legislation of Guernsey, periods during which a person was gainfully occupied as an employed person in Australia shall be treated as if they had been contribution or equivalent periods completed as an employed person under the legislation of Guernsey.

5. A person shall be treated as if he or she had had earnings or contributions credited to him or her as an employed person for any week during which he or she was in Australia and was unemployed and available for work or was incapable of work, if that week was part of a period during which he or she was or would ordinarily have been gainfully occupied under a contract of service.

6. Nothing in this Article shall diminish any right which a person has, apart from this Agreement, to receive unemployment benefit under the legislation of the United Kingdom.

7. The provisions of this Article shall not apply to a person who claims unemployment benefit under the legislation of Guernsey and who has not paid 26 contributions as an employed person under that legislation.

PART VI—MISCELLANEOUS PROVISIONS

ARTICLE 15

Temporary Absences

1. A benefit which is payable to a person by Australia under Part II of this Agreement shall not cease to be payable solely where the person is absent from Australia and the competent authority of Australia is satisfied that the absence is temporary. After the person has been temporarily absent from Australia for a period of 12 months at any one time that person shall then be deemed to have departed permanently from Australia.

2. Where a person, who is qualified to receive any benefit under the legislation of the United Kingdom, would be qualified to receive also an increase of that benefit for a dependant if the dependant were in that territory, he or she shall be qualified to receive that increase while the dependant is temporarily in Australia.

ARTICLE 16

Calculation of Australian Benefits

1. Subject to paragraph (5), the provisions of this Article shall apply, in relation to the territory of the United Kingdom, only to retirement pensions and widows’ benefits, and, in relation to Australia only to age pensions, wives’ pensions, spouse carer’s pensions and pensions payable to widows, being benefits payable under the legislation of Australia solely by virtue of this Agreement; and, for the purpose of applying those provisions, the effect of any provision of the legislation of any part of the territory of the United Kingdom which concerns overlapping benefits shall be disregarded.

2. Subject to the provisions of paragraph (3), where a person who is qualified to receive an Australian benefit also receives a United Kingdom benefit, the rate of that Australian benefit shall be set by:

(a) calculating that person’s income according to the legislation of Australia but disregarding in that calculation the United Kingdom benefit received by that person;

(b) deducting the amount of the United Kingdom benefit received by that person from the maximum rate of that Australian benefit; and

(c) applying to the remaining benefit obtained under sub‑paragraph (b) the relevant rate calculation set out in the legislation of Australia using as the person’s income the amount calculated under sub‑paragraph (a).

3. Where a married person is, or both that person and his or her spouse are, in receipt of a United Kingdom benefit or benefits, each of them shall be deemed, for the purpose of paragraph (2) and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

4. If a person would receive an Australian benefit except for the operation of paragraph (2) or except for that person’s failure to claim the benefit, then for the purpose of a claim by that person’s spouse for a payment under the legislation of Australia that person shall be deemed to receive that benefit.

5. The reference in paragraph (4) to a payment under the legislation of Australia to the spouse of a person is a reference to a payment of:

(a) an age pension;

(b) an invalid pension;

(c) an unemployment benefit;

(d) a sickness benefit;

(e) a sheltered employment allowance; or

(f) a rehabilitation allowance,

 under that legislation, whether payable by virtue of this Agreement or otherwise.

6. For the purpose of this Article “benefit” includes any additional earnings‑related pension, incremental addition, invalidity allowance and age addition payable with the benefit.

ARTICLE 17

Dual Entitlement in Australia

Where:

(a) a claim is made for a benefit payable by Australia, by virtue of this Agreement; and

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

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

ARTICLE 18

Dual Entitlement in UK

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

ARTICLE 19

Recovery of Benefit

1. Where a benefit is payable by a Party to a person in respect of a past period (in this Article referred to as “the first benefit”), and

(a) for all or part of that same period, the other Party has paid to that person a benefit under its legislation (in this Article referred to as “the second benefit”); and

(b) the amount of the second benefit would have been reduced had the first benefit been paid during that period, the competent authority of the former Party, at the request of the competent authority of the latter Party, shall:

(c) deduct from the first benefit an amount equal to the amount of the second benefit that would not have been paid had the first benefit been paid on a periodical basis throughout that past period; and

(d) transmit any sum deducted in accordance with sub‑paragraph (c) above to the competent authority of the latter Party.

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

2. Where the United Kingdom has paid a benefit to a person in respect of a past period and:

(a) for all or part of that same period, Australia has paid to that person a benefit under its legislation; and

(b) the amount of the benefit paid by Australia would have been reduced had the United Kingdom paid its benefit during that period, the competent authority of Australia may determine that:

(c) the amount of its benefit which would not have been paid had the United Kingdom paid its benefit on a periodical basis throughout that period is a debt due by that person to Australia; and

(d) the amount, or any part, of that debt may be recovered from future benefits which Australia may pay under its legislation to that person.

3. A reference in paragraphs (1) or (2) to a payment under the legislation of a Party means a benefit payable whether by virtue of this Agreement or otherwise.

4. Where a person has received income support under the legislation of Great Britain, Northern Ireland or the Isle of Man for a period for which that person subsequently becomes entitled to any benefit under the legislation of Australia, the competent institution of Australia, at the request of and on behalf of the competent institution of Great Britain, Northern Ireland or the Isle of Man, shall withhold from the benefit due for that period the amount by which the income support paid exceeded what would have been paid had the benefit under the legislation of Australia been paid before the amount of income support was determined, and shall transmit the amount withheld to the competent institution of Great Britain, Northern Ireland or the Isle of Man.

ARTICLE 20

Meaning of Permanently Resident

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

ARTICLE 21

Gainful occupation in Australia

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

(a) any period of service, whether in Australia or elsewhere, in the Defence Force of Australia; and

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

PART VII—ADMINISTRATION

ARTICLE 22

Administrative Arrangements

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

ARTICLE 23

Disclosure of Information

1. The competent authorities may supply to each other such information as is necessary for the operation of this Agreement or of the legislation of each territory to which this Agreement applies as if the matter involved the application of their own legislation.

2. Any information received by a competent authority pursuant to paragraph (1) shall be protected in the same manner as information obtained under the legislation of that territory and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with matters, including the determination of appeals, arising under the provisions of this Agreement and of the legislation to which this Agreement applies and shall be used only for those purposes.

3. In no case shall the provisions of paragraphs (1) and (2) be construed so as to impose on the competent authority of either Party the obligation:

(a) to carry out administrative measures which are at variance with the laws or the administrative practice of either Party; or

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of either Party.

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

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

PART VIII—TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 24

Transitional Provisions

1. No provision of this Agreement shall confer any right to receive any payment of a benefit for a period before the date of the entry into force of this Agreement.

2. Any contribution which a person has paid or earnings or contributions credited under the legislation of the United Kingdom before the date of the entry into force of this Agreement, and any period during which a person was resident in Australia before that date, shall be taken into account for the purpose of determining the right to receive a benefit in accordance with the provisions of this Agreement under the legislation of Australia and under the legislation of the United Kingdom respectively.

3. Subject to paragraph (4), where, on the date on which this Agreement enters into force, a person:

(a) is in receipt of a benefit under the legislation of either Party by virtue of the former Agreement; or

(b) is qualified to receive a benefit referred to in sub‑paragraph (a) and, where a claim for that benefit is required, has claimed that benefit,

 no provision of this Agreement shall affect the entitlement to receive that benefit.

4. The rate of a benefit which is payable by virtue of paragraph (3) shall, subject to this Agreement, be assessed in accordance with the provisions of the legislation of the relevant Party.

ARTICLE 25

Entry into Force

1. The Agreement shall enter into force on a date to be specified in Notes exchanged by the Parties through the Diplomatic channel notifying each other that all matters as are necessary to give effect to this Agreement have been finalised.

2. Subject to the provisions of Article 24, the former Agreement shall terminate on the date of entry into force of this Agreement.

ARTICLE 26

Termination Provisions

1. Subject to paragraph (2), this Agreement shall remain in force until the expiration of twelve months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of the other Party to terminate this Agreement.

2. In the event that this Agreement is terminated in accordance with paragraph (1), the Agreement shall continue to have effect in relation to all persons who by virtue of this Agreement:

(a) at the date of termination, are in receipt of benefits; or

(b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits.

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

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

For the Government of For the Government of the

Australia: United Kingdom of Great

 Britain and Northern Ireland:

Graham Richardson Caithness

[Signatures omitted]

PART B

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

**Note No. 29**

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

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

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

22 April 1992

British High Commission

CANBERRA

**Note No. 312327**

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

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

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

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

CANBERRA

23 April 1992.

PART C

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

**Note No. 30**

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

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

(a) Articles 6 and 15(2) of the Agreement shall be deleted;

(b) The following shall be inserted after Article 15 of the Agreement.

**“ARTICLE 15A**

UK INCREASES FOR DEPENDANTS

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

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

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

22 April 1992

British High Commission

Canberra

**Note No. 312326**

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

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

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

(a) Articles 6 and 15(2) of the Agreement shall be deleted;

(b) The following shall be inserted after Article 15 of the Agreement.

**“ARTICLE 15A**

UK INCREASES FOR DEPENDANTS

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

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

The Department has the honour to confirm that the foregoing is acceptable to the Government of Australia and that the High Commission’s Note and this reply shall together constitute an Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland which shall enter into force on 29 June 1992.

CANBERRA

22 April 1992.

# Schedule 2—Italy

Note: See section 5.

AGREEMENT BETWEEN AUSTRALIA AND THE REPUBLIC OF ITALY PROVIDING FOR RECIPROCITY IN MATTERS RELATING TO SOCIAL SECURITY

Australia and the republic of Italy,

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

Desiring to co‑ordinate the operation of their respective social security systems and to enhance the equitable access by people who move between Australia and Italy to social security benefits provided for under the laws of both countries, Have agreed as follows:

PART I—INTERPRETATION AND SCOPE

ARTICLE 1

Interpretation

1. In this Agreement, unless the context otherwise requires:

(a) “Australian benefit” means a benefit referred to in Article 2 in relation to Australia;

(b) “benefit” means Australian benefit or Italian benefit;

(c) “competent authority” means, in the case of Australia, the Secretary to the Department of Social Security or an authorised representative of the Secretary and, in the case of Italy, the Ministry of Labour and Social Welfare;

(d) “dependants” means, in relation to Italy, persons who are within the categories of family members of a person insured, or of a pensioner, under the social security laws of Italy and who are recognised, by those laws, as the dependants of such a person or pensioner;

(e) “institution”, in relation to a Contracting Party, means an institution apart from a competent authority which is responsible for the application of this Agreement in respect of that Contracting Party as specified in administrative arrangements made from time to time pursuant to Article 19;

(f) “Italian benefit” means a benefit payable under the social security laws of Italy;

(g) “Italian supplement” means a supplement paid in order to increase the amount of a benefit, derived from credited contributions and payable to a person, to the minimum amount specified for that benefit in the social security laws of Italy;

(h) “month” means calendar month;

(i) “period of Australian residence during working life”, in relation to a person, means the period, or the aggregate of the periods, during which that person has been a resident of Australia, other than any period ‑

(a) during which the person had not attained the age of 16 years; or

(b) after the person, being a woman, had attained the age of 60 years or, being a man, had attained the age of 65 years;

 but does not include any period deemed pursuant to sub‑paragraph 1 (c) of Article 7 to be a period in which that person was residing in Australia;

(j) “period of credited contributions”, in relation to a person, means a period, or the total of two or more periods, of contributions used to acquire a benefit, and any period deemed to be a period of contributions, under the social security laws of Italy by that person but does not include any period deemed pursuant to sub‑paragraph 1(d) of Article 7 to be a period of credited contributions in Italy;

(k) “period of residence in Australia”, in relation to a person, means a period or the total of 2 or more periods, at any time, when that person was residing in Australia for purposes of the social security laws of Australia, but does not include any period deemed pursuant to sub‑paragraph 1(c) of Article 7 to be a period in which that person was residing in Australia;

(l) “social security laws of Australia” means the Social Security Act 1947 of Australia as amended, not including amendments effected by laws made by Australia for the purpose of giving effect to an agreement on social security;

(m) “social security laws of Italy” means legislation within the scope of this Agreement, in relation to Italy, by virtue of Article 2;

(n) “spouse carer’s pension” means a carer’s pension payable to a husband under the legislation within the scope of this agreement relating to Australia;

(o) “survivors” means, in relation to Italy, persons who are within the categories of family members of a person who was insured or was a pensioner under the social security laws of Italy, and is now deceased, and who are recognised by those laws as survivors of that person or pensioner;

(p) “widow” means, in relation to Australia, a de jure widow; and

(q) “year” means a period of 365 days or, if that period includes 29 February, 366 days.

2. A reference in this Agreement to additional pensions and mothers’ and guardians’ allowances for children is a reference to increases in the rate of any of the benefits referred to in items (i) to (vi) inclusive of sub‑paragraph 1 (a) of Article 2 and paid under provisions of the legislation within the scope of this Agreement in relation to Australia relating to the custody, care and control of a child or children.

3. In the application of this Agreement by a Contracting Party, any term not defined in this Agreement shall, unless the context otherwise requires, have the meaning which it has under the legislation within the scope of this Agreement, in relation to that Contracting Party, by virtue of Article 2.

ARTICLE 2

Legislative Scope

1. The legislation within the scope of this Agreement is:

(a) in relation to Australia: the Social Security Act 1947 as amended at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that Act, in so far as that Act and that legislation provide for and for all matters in relation to the following benefits:

(i) age pensions;

(ii) invalid pensions;

(iii) pensions payable to widows;

(iv) wives’ pensions;

(v) double orphans’ pensions;

(vi) spouse carers’ pensions; and

(vii) additional pensions and mothers and guardians’ allowances for children; and

(b) in relation to Italy: the legislation in force at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that legislation, concerning the compulsory general insurance scheme for employees in regard to invalidity, old age and survivors; special insurance schemes for self‑employed persons and other categories of workers; family allowances and unemployment insurance, and in particular the following benefits:

(i) old age pensions;

(ii) seniority pensions;

(iii) anticipated pensions;

(iv) invalidity allowances;

(v) inability pensions;

(vi) privileged invalidity allowances;

(vii) privileged inability pensions;

(viii) invalidity attendance allowance;

(ix) survivors’ pensions;

(x) family allowances for dependants of pensioners; and

(xi) unemployment allowances.

2. Notwithstanding the provisions of paragraph 1, the legislation within the scope of this Agreement shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any bilateral agreement on social security entered into by either Contracting Party.

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

ARTICLE 3

Personal Scope

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

ARTICLE 4

Equality of Treatment

1. The citizens of each of the Contracting Parties shall be treated equally in the application of the social security laws of Australia and of Italy, respectively, and in any case in which entitlement to a benefit payable under those laws by a Contracting Party depends, in whole or in part, on citizenship of that Contracting Party, a person who is a citizen of the other Contracting Party shall, for the purposes of a claim for that benefit, be deemed to be a citizen of the first‑mentioned Contracting Party.

2. The persons to whom this Agreement applies shall be treated equally by each of the Contracting Parties in regard to rights and obligations which arise by virtue of this Agreement in relation to each Contracting Party.

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

ARTICLE 5

Residence or Presence in Italy

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

(a) residing in Australia and physically present in Italy;

(b) residing in Italy and physically present in Australia; or

(c) residing and physically present in Italy,

that person shall be deemed, for the purposes of that claim, to be residing in and physically present in Australia on that date.

ARTICLE 6

Residence or Presence in a Third Country

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

PART III—TOTALISATION AND PRO‑RATA BENEFITS

ARTICLE 7

Totalisation of Periods of Residence and Periods of Contributions

1. Where a person to whom this Agreement applies has accumulated:

(a) a period of residence in Australia that is:

(i) less than the period required to qualify him or her, in respect of residence, under the social security laws of Australia for an Australian benefit; and

(ii) equal to or greater than the minimum period identified in accordance with paragraph 4 for that person; or

(b) a period of credited contributions that is:

(i) less than the period required to qualify him or her, in respect of contributions, under the social security laws of Italy for an Italian benefit; and

(ii) equal to or greater than the minimum period identified in accordance with paragraph 5 for that benefit,

 and, on the other hand, has accumulated both a period of Australian residence during working life and a period of credited contributions in Italy which, when added together, are equal to or in excess of the required minimum period specified for that benefit by the legislation that is within the scope of this Agreement in relation to the Contracting Party by whom the benefit may be payable, then:

(c) for the purposes of a claim for that Australian benefit, the last‑mentioned period of credited contributions shall be deemed to be a period in which that person was residing in Australia; and

(d) for the purposes of a claim for that Italian benefit, that period of Australian residence during working life shall be deemed to be a period of credited contributions in Italy.

2. Where a person to whom paragraph 1 applies:

(a) has resided continuously in Australia for a period which is less than the minimum period of continuous residence required by the social security laws of Australia for entitlement of that person to an Australian benefit; and

(b) has accumulated a period of credited contributions in 2 or more separate periods that exceed in total the minimum period referred to in sub‑paragraph (a),

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

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

(a) for an Australian benefit: as a period of residence in Australia; and

(b) for an Italian benefit: as a period of credited contributions.

4. The minimum period of Australian residence during working life to be taken into account for the purposes of paragraph 1 shall be as follows:

(a) for the purposes of an Australian benefit that is payable to a person outside Australia: the minimum period required shall be 1 year’s residence, of which at least 6 months must be continuous; and

(b) for the purposes of an Australian benefit that is payable to a person in Australia: no minimum period shall be required.

5. The minimum period of credited contributions in Italy to be taken into account for the purposes of paragraph 1 shall be as follows:

(a) for old age pension: 1 year;

(b) for anticipated pension: 1 year;

(c) for seniority pension: 15 years;

(d) for invalidity allowance: 1 year;

(e) for inability pension: 1 year;

(f) for privileged invalidity allowance: 1 year;

(g) for privileged inability pension: 1 year; and

(h) for survivor’s pension: 1 year.

6. For the purposes of eligibility for voluntary insurance under the social security laws of Italy, a period of credited contributions in Italy in relation to a person shall be combined, where necessary, with any period of Australian residence during working life accumulated by that person, provided that the first‑mentioned period totals at least one year.

ARTICLE 8

Australian Pro‑Rata Benefits

1. Where an Australian benefit, other than a double orphan’s pension, is payable by virtue of this Agreement:

(a) to a person who is outside Australia: subject to paragraphs 2 and 9, the rate of that benefit shall be determined in accordance with the formula

**A = PQ**

 300

 where

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

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

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

(i) he or she were in Australia and were qualified under the social security laws of Australia to receive that benefit;

(ii) any amount paid to that person as an Italian supplement were not included as income for that person in determining the rate; and

(iii) the amount of Italian benefit taken into account as income for those same purposes were calculated as follows;

**Y =** **Q** X **I**

 300

 where

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

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

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

(b) to a person who is in Australia: the rate of that benefit shall, subject to paragraph 6, be calculated by disregarding, in the computation of his or her income, any Italian benefit, including any Italian supplement, which that person is entitled to receive, and by deducting the amount of that Italian benefit, including that supplement, from the rate of Australian benefit which would otherwise be payable to that person.

2. The rate mentioned in subparagraph 1(a) in relation to the symbol A shall not exceed the rate that would have been payable to that person if he or she had been in Australia and had met the requirements, in respect of residence, under the social security laws of Australia.

3. Where the rate of a benefit calculated in accordance with subparagraph 1(b) is less than the rate of that benefit which would be payable under subparagraph 1(a) if the person concerned were outside Australia, the first‑mentioned rate shall be increased to an amount equivalent to the second‑mentioned rate.

4. For the purposes of paragraph 3, a comparison of the rates of a benefit determined in accordance with subparagraphs 1(a) and 1(b) shall be made as at:

(a) the date of the first pension pay day occurring after the date on which the claim for the benefit was lodged; and

(b) each anniversary of that pension pay day for so long as the person concerned is entitled to the benefit,

 using, as the value of the symbol Q in subparagraph 1(a), the number of whole months, plus one, in the period of Australian residence during working life accumulated by the person at the date as at which the comparison is made.

5. In the case of a person and his or her spouse or of a widow, the value to be applied to the symbol Q for the purposes of subparagraph 1(a), in relation to a claim by either that person or each of that person and that spouse, or by that widow, shall be determined in accordance with those provisions of the social security laws of Australia which specify periods of residence for calculating benefits payable to persons outside Australia.

6. For the purposes of subparagraph 1(b), where:

(a) one or other, or both, of a person and his or her spouse are entitled to receive an Italian benefit; or

(b) a person is entitled to receive an increase in respect of his or her spouse in an Italian benefit payable to that person,

 the total of the Italian benefits payable to that person and his or her spouse shall be apportioned equally between them and disregarded in the computation of their respective incomes, and the amount so apportioned shall be deducted from the amount of Australian benefit that would otherwise be payable to each of them.

7. In paragraph 6, a reference to a spouse of a person is a reference not only to the de jure spouse of that person but also to a de facto spouse within the meaning of that term under the social security laws of Australia.

8. Subparagraph 1(a) shall not apply to:

(a) a person who becomes qualified to receive an invalid pension by virtue of this Agreement where the person became permanently incapacitated for work or permanently blind while in Australia or during a temporary absence from Australia;

(b) a widow who becomes qualified to receive a widow’s pension by virtue of this Agreement by reason of the death in Australia or during a temporary absence from Australia of the widow’s former spouse while the widow and that spouse were residing permanently in Australia; or

(c) a person, during any absence of the person from Australia that commences before 1 January 1996, who:

(i) becomes eligible to receive an Australian benefit by virtue of this Agreement;

(ii) was a resident of Australia or an absent resident on 8 May 1985; and

(iii) commences to receive that benefit before 1 January 1996.

9. An Australian benefit that is payable by virtue of this Agreement to a person who:

(a) was a resident of Australia or an absent resident on 8 May 1985; and

(b) commences to receive that benefit before 1 January 1996,

 shall be paid, during any absence of that person from Australia that commences before 1 January 1996, at a rate calculated in accordance with subparagraph 1(b) and paragraph 3.

ARTICLE 9

Italian Pro‑Rata Benefits

1. The amount of an Italian benefit payable to a person by virtue of this Agreement through the application of Article 7 shall be determined as follows:

(a) the amount of the theoretical benefit to which the person concerned would be entitled shall be established as if the period of credited contributions in Italy, and the period of Australian residence during working life referred to in subparagraph 1(d) of Article 7, and accumulated to the date from which the benefit would be payable, for that person had accumulated under the social security laws of Italy; and

(b) the amount of benefit payable shall be that amount which bears to the amount referred to in subparagraph(a) the same ratio as that period of credited contributions bears to the sum of that period of credited contributions and that period of Australian residence during working life for that person.

2. If the sum of the periods referred to in subparagraph 1(b) exceeds the maximum period provided for by the social security laws of Italy for entitlement to the maximum rate of the benefit concerned, that maximum period shall be substituted for that sum in calculations made in accordance with that subparagraph.

3. The calculation of a rate in relation to a person in accordance with paragraph 1 shall take into account only the salary of that person which was subject to contributions under the social security laws of Italy.

PART IV—PROVISIONS CONCERNING BENEFITS

ARTICLE 10

Payment of Supplementary and Additional Amounts

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

ARTICLE 11

Unemployment Allowance

For the purposes of eligibility by a citizen of Australia or of Italy for unemployment allowance under the social security laws of Italy, any periods of employment accumulated by that person in Australia, other than periods of self‑employment, shall be totalised with periods of credited contributions in Italy for that person, if those last‑mentioned periods total one year or more.

ARTICLE 12

Double Orphan’s Pension

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

ARTICLE 13

Family Allowances

Family allowances payable under the social security laws of Italy:

(a) shall be payable by virtue of this Agreement to persons who are receiving an Italian benefit payable under the social security laws of Italy, whether those persons are citizens of Australia or Italy, and who are residing in Australia; and

(b) shall not preclude the payment of family allowance under the social security laws of Australia, including those laws as modified or adapted by laws giving effect to an agreement on social security with a third country,

and shall for the purposes of reciprocity in relation to this Agreement be regarded as the Italian benefit equivalent to those Australian benefits described as:

(c) wives’ pensions;

(d) spouse carers’ pensions; and

(e) additional pensions and mothers’ and guardians’ allowances for children.

ARTICLE 14

Wife’s Pension and Spouse Carer’s Pension

A person who receives from Australia a wife’s pension or a spouse carer’s pension by virtue of the fact that the spouse of that person receives, by virtue of that Agreement, an Australian benefit shall, for the purposes of this Agreement and in particular for the purposes of paragraph 6 of Article 8, be deemed to receive that pension by virtue of this Agreement.

PART V—MISCELLANEOUS PROVISIONS

ARTICLE 15

Lodgement of Claims

1. A claim for a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged:

(a) in the territory of either of the Contracting Parties in accordance with administrative arrangements made pursuant to Article 19; or

(b) in a third country if that country is of the kind referred to in Article 6,

 at any time after the Agreement enters into force.

2. Where a claim for a benefit of a Contracting Party is lodged in the territory of the other Contracting Party or in a third country in accordance with paragraph 1, the date on which the claim is so lodged shall be the date of lodgement of the claim for all purposes relating to the claim.

ARTICLE 16

Determination of Claims

1. In determining the entitlement of a person to a benefit by virtue of this Agreement:

(a) a period of Australian residence during working life and a period of credited contributions; and

(b) any event which is relevant to that entitlement,

 shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person and whether they were accumulated or occurred before or after the date on which this Agreement enters into force.

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the social laws of the Contracting Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.

3. (1) Where:

(a) a claim is made for a benefit payable by one of the Contracting Parties, whether by virtue of this Agreement or otherwise; and

(b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to a benefit (in this Article called “assumed benefit”), that is payable by the other Contracting Party and that, if paid, would affect the amount of the first‑mentioned benefit,

 that claim may be determined by the first‑mentioned Party as if the assumed benefit were in fact being paid to that claimant.

 (2) Where a claim for a benefit is determined in accordance with subparagraph (1) and it is subsequently established that the amount of the assumed benefit in relation to that person was not in fact paid, any deficiency in the payment of the first‑mentioned benefit shall be adjusted retrospectively.

 (3) In this paragraph and in paragraph 4, “benefit” is not limited to those benefits specified in Article 2.

4. Where:

(a) it appears that a person who is entitled to the payment of a benefit by one of the Contracting Parties might also be entitled to the payment of a benefit by the other Contracting Party, in either case whether by virtue of this Agreement or otherwise;

(b) the amount of the benefit that might be paid by that other Contracting Party would affect the amount of the benefit payable by the first‑mentioned Contracting Party; and

(c) the amount that could be due in respect of the benefit by that other Contracting Party, whether by virtue of this Agreement or otherwise, is likely to include an adjustment for arrears of that benefit,

 then

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

(e) the first‑mentioned Contracting Party may deduct from the amount of those arrears any excess amount of the benefit paid by it and shall pay any balance remaining to that person.

ARTICLE 17

Exclusion of Italian Supplement from Australian Income Test

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

ARTICLE 18

Portability of Benefits

1. Where a benefit is payable by a Contracting Party by virtue of this Agreement that benefit shall be payable within and outside the respective territory of both Contracting Parties.

2. Subject to paragraph 3, the payment of a benefit by a Contracting Party shall be subject to the provisions of this Agreement and of the legislation within the scope of this Agreement in relation to that Contracting Party.

3. The legislation referred to in paragraph 2 in relation to Australia shall not include those provisions which preclude the payment of benefits outside Australia.

4. A benefit payable by a Contracting Party by virtue of this Agreement shall be paid by that Contracting Party, whether the beneficiary is in the territory of the other Contracting Party or outside the respective territory of both Contracting Parties, without deduction for administrative fees and charges.

ARTICLE 19

Administrative Arrangements and Mutual Assistance

1. The competent authorities of the Contracting Parties shall make whatever administrative arrangements are necessary from time to time in order to implement this Agreement, or in relation to any matter arising under their respective social security laws, and, where those arrangements are required to be made on a mutual basis, shall co‑operate, both in regard to matters affecting the operation of both social security systems and of each of them.

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

ARTICLE 20

Exchange of Information

1. The competent authorities and the institutions of the Contracting Parties shall exchange such information as is necessary for the operation of this Agreement or of the social security laws of the Contracting Parties concerning all matters arising under this Agreement or under those laws.

2. The competent authorities and institutions of the Contracting Parties may exchange information of the kind referred to in paragraph 1 in relation to any person who has lodged a claim for or is in receipt of a benefit and who is outside the categories of persons referred to in Article 3.

3. Any information received by the competent authority or an institution of a Contracting Party pursuant to paragraphs 1 or 2 shall be protected in the same manner as information obtained under the social security laws of that Contracting Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with matters, including the determination of appeals, arising under the provisions of this Agreement or the social security laws of the Contracting Parties and shall be used only for those purposes.

4. In no case shall the provisions of paragraphs 1, 2 and 3 be construed so as to impose on the competent authority or an institution of a Contracting Party the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or of the other Contracting Party; or

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or the other Contracting Party.

5. Unless there are reasonable grounds for believing the contrary, any information received by a competent authority or relevant institution from the competent authority or an institution of the other Contracting Party shall be accepted as valid or true, as the case requires.

6. A Contracting Party shall not raise any charges against the other Contracting Party for services of an administrative nature, including services rendered in accordance with Article 19, by that first‑mentioned Contracting Party to the other in accordance with this Agreement, but that other Contracting Party shall meet any costs or expenses which are reasonably incurred for those services and are payable to another person or organisation.

ARTICLE 21

Appeals

1. Any person who is affected by a determination, direction, decision or approval made or given by the competent authority or institution of a Contracting Party, in relation to a matter arising by virtue of this Agreement shall have the same rights to the review, by administrative and judicial bodies of that Contracting Party, of that determination, direction, decision or approval as are provided under the domestic laws of that Contracting Party.

2. Documents relating to appeals that may be made to administrative bodies established by, or administratively for the purposes of, the social security laws of one of the Contracting Parties may be lodged in the territory of the other Contracting Party, in accordance with administrative arrangements made pursuant to Article 19 and any documents duly lodged in that manner shall be regarded as duly lodged for the purposes of those laws.

3. The date on which a document is duly lodged in the territory of one of the Contracting Parties in accordance with paragraph 2 shall determine whether that document is lodged within any time limit specified by the laws or administrative practices of the other Contracting Party which govern the appeal concerned.

ARTICLE 22

Review of Agreement

1. The Contracting Parties may agree at any time to review any of the provisions of this Agreement.

2. The Contracting Parties shall appoint representatives to meet as a committee of experts once during each year for the first four years after this Agreement comes into force and to review and report to the competent authorities on the operation and effectiveness of the Agreement, taking into account operational experience and practices in and between the two countries and between either of them and any other country with which either has entered into an agreement on social security.

3. The contracting Parties shall consult on the further arrangements to review this Agreement and its operations to apply after it has been in force for four years.

4. The administrative arrangements made pursuant to Article 19 shall contain guidance on the role and method of operation of the committee of experts referred to in paragraph 2.

5. (1) In particular, where a Contracting Party enacts legislation that amends, supplements or replaces the legislation within the scope of this Agreement in relation to that Contracting Party, the Contracting Parties shall, if one of them so requests, consult on any matters that arise, as a consequence of that first‑mentioned legislation, in relation to the continued operation or possible amendment of this Agreement.

 (2) For the purposes of the consultations referred to in subparagraph (1), the Contracting Parties may direct the committee of experts referred to in paragraph 2 to meet and report on matters which the Contracting Parties require to be considered by the committee.

PART VI—FINAL PROVISIONS

ARTICLE 23

Entry Into Force

1. This Agreement shall be ratified by both Contracting Parties according to their respective procedures and shall enter into force on the first day of the month next following the month in which the instruments of ratification are exchanged.

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

ARTICLE 24

Termination

1. Subject to paragraph 2, this Agreement shall remain in force until the expiration of 12 months from the date on which either Contracting Party receives from the other written notice through the diplomatic channel of the intention of the other Contracting Party to terminate this Agreement.

2. In the event that this Agreement is terminated in accordance with paragraph 1, the Agreement shall continue to have effect in relation to all persons who:

(a) at the date of termination, are in receipt of benefits; or

(b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits,

 by virtue of this Agreement.

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

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

FOR AUSTRALIA FOR THE REPUBLIC OF ITALY

Bob Hawke B. Craxi

[Signatures omitted]

# Schedule 3—New Zealand

Note: See section 5.

part a

AGREEMENT between THE GOVERNMENT OF AUSTRALIA and the GOVERNMENT OF NEW ZEALAND providing for reciprocity in matters relating to social security

The Government of Australia and

The Government of New Zealand

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

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

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

HAVE agreed as follows:

PART I—GENERAL PROVISIONS

Article 1

Interpretation

1. In this Agreement, unless the context otherwise requires:

(a) “benefit” means in relation to a Party, any of the benefits, pensions or allowances listed in Article 2(1), and includes any amount, increase or supplement that is payable in addition to that benefit, pension or allowance to or in respect of a person who is eligible for that amount, increase or supplement under the legislation of that Party;

(b) “competent authority” means,

 in relation to Australia:

 the Secretary to the Department of Social Security; and

 in relation to New Zealand:

 the Director‑General of Social Welfare or an authorised representative of the Director‑General;

(c) “competent institution” means,

 in relation to Australia:

 the Department of Social Security; and

 in relation to New Zealand:

 the New Zealand Income Support Service of the Department of Social Welfare;

(d) “financial year” means, except in the case of the first financial year, the period from 1 July of any year to 30 June of the next year;

(e) “first financial year” means the period from 1 January 1995 to 30 June 1995;

(f) “foreign pension” means, in relation to a person, any payment made to that person under the national social security, social welfare or social insurance law of a third state;

(g) “legislation” means,

 in relation to Australia, the law specified in subparagraph 1(a) of Article 2; and

 in relation to New Zealand, the laws specified in subparagraph 1(b) of Article 2;

(h) “month” means, except as provided in Article 12, a calendar month, but where days are aggregated a month means 30 days;

(i) “period of Australian working life residence” means,

 in relation to Australia, a period defined as such in the legislation of Australia but also includes any period during which the person to whom it relates, relied on Article 4(1)(b) of the agreement signed at Canberra on 31 October 1988 or relies on Article 8(2)(b)(ii) or (iii) to be eligible for an Australian benefit;

(j) “period of New Zealand working life residence” means,

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

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

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

(m) “territory” means,

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

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

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

(n) “year” means 12 calendar months.

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

Article 2

Legislative Scope

1. Except as provided under paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any legislation that subsequently amends, supplements, consolidates or replaces them:

(a) in relation to Australia: the *Social Security Act 1991* in so far as Act provides for, applies to or affects the following benefits:

(i) age pension;

(ii) disability support pension;

(iii) widow B pension;

(iv) sole parent pension;

(v) wife pension; and

(vi) additional family payment payable to persons in receipt of the above benefits; and

(b) in relation to New Zealand: the *Social Security Act 1964* and the *Social Welfare (Transitional Provisions) Act 1990* in so far as they provide for, apply to or affect the following benefits:

(i) New Zealand superannuation;

(ii) veteran’s pension;

(iii) invalids benefit;

(iv) widows benefit; and

(v) domestic purposes benefit for solo parents.

2. This Agreement shall apply to laws or regulations which extend the existing legislation to other categories of beneficiaries only if the two Parties so agree in a formal amendment to this Agreement.

Article 3

Personal Scope

1. This Agreement shall apply to any person who:

(a) is or has been an Australian resident; and

(b) is or has been ordinarily resident in the territory of New Zealand; and

 to any other person who derives rights to a benefit from a person who is eligible for a benefit under this Agreement.

2. This Agreement shall not apply to persons who are unlawfully in the territory of a Party.

3. No person shall be considered to have been resident, present, ordinarily resident or to have acquired working life residence in the territory of either Party for any period during which that person was unlawfully in the territory of a Party.

Article 4

Equality of Treatment

Except as provided in this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

**PART II—PROVISIONS RELATING TO BENEFITS**

Article 5

Corresponding Benefits

1. For the purposes of this Agreement:

(a) the Australian age pension corresponds to New Zealand superannuation and veteran’s pension;

(b) the Australian age pension paid to a woman who would receive a widows benefit if she was in New Zealand shall correspond to a New Zealand widows benefit;

(c) the Australian disability support pension corresponds to the New Zealand invalids benefit;

(d) the Australian widow B pension corresponds to the New Zealand widows benefit paid to persons without dependent children; and

(e) the Australian sole parent pension corresponds to the New Zealand domestic purposes benefit for solo parents and widows benefit paid to persons with dependent children.

Article 6

Partner Related Benefits

1. A person who receives a benefit under the legislation of either Australia or New Zealand, due to the fact that the partner of that person receives a benefit by virtue of this Agreement, shall be considered to be receiving that benefit under this Agreement.

2. If a person is eligible for and is receiving a New Zealand benefit under the legislation of New Zealand independently of that person’s partner who is receiving a New Zealand benefit by virtue of this Agreement, that person shall not be considered to be receiving his or her benefit under this Agreement.

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

Article 7

Eligibility for New Zealand Benefits by Former Residents of Australia

1. A person who does not meet the residence criteria for New Zealand superannuation but would otherwise be eligible for that benefit under the legislation of New Zealand shall be eligible for New Zealand superannuation if that person:

(a) has reached the age of eligibility under the legislation of New Zealand or under the legislation of Australia for a corresponding benefit, whichever is the later age;

(b) is one of the following:

(i) ordinarily resident in New Zealand;

(ii) present in New Zealand and has the intention of remaining in New Zealand for at least one year; or

(iii) present in New Zealand and has been present in New Zealand for at least one year

 at the date of grant of that benefit;

(c) either:

(i) was an Australian resident immediately before arriving in New Zealand; or

(ii) was, on entry into New Zealand, the holder of a valid Australian passport; and

(d) had been an Australian resident for a period of not less than 10 years, or an aggregate of 10 years, after age 16.

2. A person who does not meet the residence criteria for any New Zealand benefit (other than New Zealand superannuation) but who would otherwise be eligible for that benefit under the legislation of New Zealand shall be eligible for that benefit if that person:

(a) has reached the age of eligibility under the legislation of New Zealand or under the legislation of Australia, for the corresponding benefit, whichever is the later age;

(b) is one of the following:

(i) ordinarily resident in New Zealand;

(ii) present in New Zealand and has the intention of remaining in New Zealand for at least one year; or

(iii) present in New Zealand and has been present in New Zealand for one year

 at the date of grant of that benefit;

(c) either:

(i) was an Australian resident immediately before arriving in New Zealand; or

(ii) was, on entry into New Zealand, the holder of a valid Australian passport; and

(d) had been an Australian resident for a period of not less than 10 years or an aggregate of 10 years.

3. No person other than a widower shall be eligible for a domestic purposes benefit for solo parents by virtue of this Agreement or the legislation of New Zealand if that person’s right to remain in New Zealand is dependent on that person being an Australian citizen or a former Australian resident, unless that person, immediately before the claim for benefit was lodged has either:

(a) been continuously present in New Zealand for at least 26 weeks; or

(b) been ordinarily resident in New Zealand for a period of at least 12 months.

4. Nothing in this Article or Article 8 shall affect the eligibility of a person who is in receipt of a New Zealand benefit under the temporary absence provisions under the legislation of New Zealand.

5. No person shall be eligible for a New Zealand benefit at the same time as he or she is in receipt of an Australian benefit.

6. A person shall not be eligible for a benefit under this Agreement or under the legislation of New Zealand if that person fails to supply the competent authority of Australia or New Zealand with any information to which that person has access and which is legally required to establish:

(a) eligibility for a benefit under this Agreement; or

(b) the amount which the Government of Australia is required to reimburse the Government of New Zealand under this Agreement.

Article 8

Eligibility for Australian Benefits by Former Residents of New Zealand

1. A person who does not meet the residence criteria for an age pension but who would otherwise be eligible for that benefit under the legislation of Australia shall be eligible for an age pension if that person:

(a) has reached the age of eligibility under the legislation of Australia or under the legislation of New Zealand, for a corresponding benefit, whichever is the later age;

(b) is one of the following:

(i) an Australian resident;

(ii) in Australia and has the intention of remaining in Australia for at least one year; or

(iii) in Australia and has been in Australia for one year

at the date of grant of that benefit;

(c) either:

(i) was ordinarily resident in New Zealand immediately before arriving in Australia; or

(ii) was, on entry into Australia, a New Zealand citizen; and

(d) had been ordinarily resident in New Zealand for a period of not less than 10 years, or an aggregate of 10 years, after age 16.

2. A person who does not meet the residence criteria for an Australian benefit (other than an age pension) but who would otherwise be eligible for that benefit under the legislation of Australia shall be eligible for that benefit if that person:

(a) has reached the age of eligibility under the legislation of Australia or under the legislation of New Zealand for a corresponding benefit, whichever is the later age;

(b) is one of the following:

(i) an Australian resident;

(ii) in Australia and has the intention of remaining in Australia for at least one year; or

(iii) in Australia and has been in Australia for one year

at the date of grant of that benefit;

(c) either:

(i) was ordinarily resident in New Zealand immediately before arriving in Australia; or

(ii) was, on entry into Australia, a New Zealand citizen; and

(d) had been ordinarily resident in New Zealand for a period of not less than 10 years or an aggregate of 10 years.

3. No person other than a widow or a widower shall be eligible for a sole parent pension by virtue of this Agreement or the legislation of Australia if that person’s right to remain in Australia is dependent on that person being a New Zealand citizen, unless that person, immediately before the claim for benefit was lodged, has either:

(a) been continuously present in Australia for at least 26 weeks; or

(b) been an Australian resident for a period of at least 12 months.

4. Subject to this Agreement, a person who is ordinarily resident in New Zealand shall not be eligible for an Australian portable benefit where that person would be eligible for a New Zealand benefit.

5. A person who is present, but not ordinarily resident, in New Zealand shall not be eligible for an Australian portable benefit after a period which exceeds the period of temporary absence allowable for the corresponding New Zealand benefit under the legislation of New Zealand.

6. Where, at the date this Agreement comes into force, a person is ordinarily resident in or present in New Zealand and is in receipt of an Australian benefit, the competent authority of New Zealand shall calculate the rate of its benefit as if that Australian benefit was not being received and Australia shall cease paying its benefit to that person on any date New Zealand grants its benefit to that person.

7. No person shall be eligible for an Australian benefit at the same time as he or she is in receipt of a New Zealand benefit.

8. A person shall not be eligible for a benefit under this Agreement or under the legislation of Australia if that person fails to supply the competent authority of Australia or New Zealand with any information to which that person has access and which is legally required to establish:

(a) eligibility for a benefit under this Agreement; or

(b) the amount which the Government of New Zealand is required to reimburse the Government of Australia under this Agreement.

Article 9

Calculation of Rates of Benefits

1. Except as provided in paragraphs 2 and 3, if a benefit is payable by a Party under this Agreement, the amount of that benefit will be determined according to the legislation of that Party.

2. If a person who is receiving a benefit under this Agreement, is also in receipt of a foreign pension, that pension shall not be regarded as income, but the maximum rate of benefit otherwise payable to that person shall be reduced by the amount of the foreign pension.

3. For the purposes of paragraph 2, if a person receiving a benefit has a partner:

(a) in relation to Australia, each partner shall be considered to receive one half of the total of any foreign pensions received by either partner; and

(b) in relation to New Zealand, any foreign pension received by that person only shall be directly deducted first from the rate of New Zealand benefit payable to that person and then any excess shall be directly deducted from the rate of New Zealand benefit payable to that person’s partner and any foreign pension received by that person’s partner shall be directly deducted first from the rate of New Zealand benefit payable to that partner and then any excess shall be directly deducted from the rate of New Zealand benefit payable to that person.

4. Where members of a couple are in receipt of respectively, New Zealand and Australian benefits, each Party shall, when calculating the rate of benefit payable, disregard the amount of benefit paid by the other Party to the other member of the couple.

Article 10

Residence in Third States

1. If a person who has been an Australian resident and has been ordinarily resident in New Zealand is residing in a third State with which both, or either, Australia or New Zealand have or has a bilateral social security agreement:

(a) any benefit from New Zealand for which that person is eligible shall not be considered as income or directly deducted in assessing the rate of any Australian benefit for which that person is eligible; and

(b) any benefit from Australia for which that person is eligible shall not be considered as income or directly deducted in assessing the rate of any New Zealand benefit for which that person is eligible.

**PART III—REIMBURSEMENT PROVISIONS**

Article 11

Criteria for Reimbursement of Benefits

1. Except as provided in Article 13 and paragraph 3 of this Article, the Government of New Zealand shall reimburse the Government of Australia, on and from 1 January 1995, in accordance with the provisions of Article 12, for any benefit paid to a person who:

(a) has a period of Australian working life residence of less than 10 years;

(b) either:

(i) had been ordinarily resident in New Zealand immediately before arriving in Australia; or

(ii) was, on entry into Australia, the holder of a valid New Zealand passport;

(c) had been ordinarily resident in New Zealand for a period of not less than 10 years or an aggregate of 10 years;

(d) would be eligible for a corresponding benefit from New Zealand if that person had been resident in New Zealand;

(e) is an Australian resident and in Australia or is in receipt of a benefit by virtue of Article 8(1)(b)(ii) or (iii) or Article 8(2)(b)(ii) or (iii); and

(f) last became an Australian resident on or after 1 January 1983.

2. Except as provided under Article 12 and paragraph 3 of this Article, the Government of Australia shall reimburse the Government of New Zealand, on and from 1 January 1995, for any benefit paid to a person who:

(a) has a period of New Zealand working life residence of less than 10 years;

(b) either:

(i) had been an Australian resident immediately before arriving in New Zealand; or

(ii) was, on entry into New Zealand, the holder of a valid Australian passport;

(c) had been resident in Australia for a period of not less than 10 years or an aggregate of 10 years;

(d) would be eligible for a corresponding benefit from Australia if that person had been resident in Australia;

(e) is resident and present in New Zealand or is in receipt of a benefit by virtue of Article 7(1)(b)(ii) or (iii) or Article 7(2)(b)(ii) or (iii); and

(f) last became ordinarily resident in New Zealand on or after 1 January 1983.

3. Neither Party shall be required to reimburse the other Party for any sole parent pension or domestic purposes benefit payable to a person, other than a widow or widower, if that person has been in receipt of a sole parent pension for a period of less than 12 consecutive months.

4. Working life residence shall continue to be accruable during any period a benefit (other than age pension or New Zealand superannuation) is paid by either Australia or New Zealand.

5. Neither Party shall be required to reimburse the other Party for a benefit paid to a person who is outside the territory of the Party paying the benefit for a period which exceeds the period of temporary absence allowable under the legislation of New Zealand in respect of that benefit or a corresponding benefit.

6. Any Australian benefit, as defined in Article 1 of this Agreement, payable by virtue of the former Agreement at the date on which this Agreement comes into force, shall be reimbursable by the Government of New Zealand at a rate calculated under Article 12 of this Agreement.

Article 12

Rate of Reimbursement of Benefits

1. The amount a Party shall be required to reimburse the other Party for a benefit under Article 11 shall be calculated as follows:

(a) by dividing the number of whole months of working life residence in the reimbursing country of the person receiving the benefit by:

(i) 480 in the case of an age pension; and

(ii) 300 in the case of any other benefit; and

(b) by multiplying the results under subparagraph (a) by the nominal benefit rate.

2. The nominal benefit rate shall be calculated as follows:

(a) in relation to an Australian age pension, either:

(i) the amount of age pension actually paid; or

(ii) the rate of New Zealand superannuation that is payable under the legislation of New Zealand:

A. in the case of a single person living alone the rate payable to a single person who is living alone;

B. in the case of a single person not living alone the rate payable to a single person who is not living alone;

C. in the case of a married person whose partner is not receiving a wife pension, the rate payable to a married person whose spouse is also eligible for New Zealand superannuation in his or her own right;

 less an amount equal to the income of that person as it exceeds the applicable New Zealand superannuation thresholds under the *Income Tax Act of 1976*, multiplied by the prevailing rate of the New Zealand superannuation surcharge; or

D. in the case of a married person whose partner is receiving a wife pension, the rate payable to a married person whose spouse is not eligible for New Zealand superannuation in his or her own right and who elects to receive the income tested rate applicable after 1 April 1991;

 whichever is the lesser amount;

(b) in relation to other Australian benefits, either:

(i) the amount of Australian benefit actually paid; or

(ii) the rate of the corresponding New Zealand benefit (after the New Zealand income test applicable to that benefit has been applied) which would be payable if that person was resident in New Zealand;

 whichever is the lesser amount;

(c) in relation to New Zealand superannuation, either:

(i) the amount of New Zealand superannuation actually paid, less (except where the rate of payment is subject to an income test under the legislation of New Zealand) an amount equal to the income of that person as it exceeds the applicable New Zealand superannuation thresholds under the Income Tax Act of 1976, multiplied by the prevailing rate of the New Zealand superannuation surcharge; or

(ii) the rate of age pension, after the income and assets tests applicable to that person had been applied, which would be payable if that person was resident in Australia;

 whichever is the lesser amount; and

(d) in relation to other New Zealand benefits, either:

(i) the amount of New Zealand benefit actually paid; or

(ii) the rate of the corresponding Australian benefit (after the Australian income and assets tests applicable to the benefit have been applied) which would be payable if that person was resident in Australia:

 whichever is the lesser amount.

3. For the purposes of paragraph (2) the income on which any income test is applied to determine the nominal benefit rate of a person shall not include the amount of the benefit actually paid, any additional amount or supplement or any foreign pension paid to that person or that person’s partner.

4. If a person’s period of working life residence would be a number of whole months and a day or days, the period is to be increased so that it is equal to the number of months plus one month.

5. Neither Party shall be required to reimburse the other for any additional amount or supplement that is paid to a person who is in receipt of a benefit under this Agreement and in determining the nominal benefit rate, an amount of benefit actually paid or rate of benefit shall not include any additional amount or supplement.

6. In the case of a married couple, each partner shall be assessed individually for the purposes of deciding whether that person’s benefit is reimbursable under Article 11 and estimating the rate of reimbursement under this Article.

Article 13

Phase‑in Provisions

1. In respect of benefits which were granted before 1 January 1945, for the first 4 financial years, each Party shall be required to reimburse the other Party for only a percentage of the amount which is reimbursable under Article 12 in respect of those benefits (in this Article called “the reimbursable amount of the historical group”). That percentage shall be calculated as follows:

(a) 15% of the reimbursable amount of the historical group for the first financial year ending on 30 June 1995;

(b) 40% of the reimbursable amount of the historical group for the financial year ending on 30 June 1996;

(c) 6O% of the reimbursable amount of the historical group for the financial year ending on 30 June 1997; and

(d) 80% of the reimbursable amount of the historical group for the financial year ending on 30 June 1998;

 and thereafter shall pay the full reimbursable amount.

2. Notwithstanding paragraph (1)(a) above, the amount to be reimbursed by a Party for the financial year ending on 30 June 1995, under that paragraph shall be at least equal to the amount that would have been reimbursed by that Party under the 1988 Agreement between the Parties.

3. A Party shall reimburse the other Party the full amount to be reimbursed by it under Article 12 for all benefits granted by the other Party on or after 1 January 1995.

Article 14

Reimbursement Procedures

1. At least 2 months before the start of the financial year, while any benefit is reimbursable under this Agreement, the competent institution of Australia shall supply the competent institution of New Zealand with a written estimate of the amount of the reimbursement for that financial year and the competent institution of New Zealand shall supply the competent institution of Australia with a written estimate of the amount of the reimbursement for that financial year, except in respect of the first financial year, when the estimate shall be made at least 2 months before 1 January 1995.

2. The amount the competent institution of a Party is required to pay to the competent institution of the other Party for a financial year, during that financial year, shall equal the amount that the other Party estimated under paragraph 1.

3. Subject to paragraph 4, the amount determined in paragraph 1 shall be payable in equal quarterly instalments by the competent institution of a Party to the competent institution of the other Party on 1 July, 1 October, 1 January and 1 April.

4. In regard to amounts to be reimbursed by each Party in the first financial year of operation of this Agreement, the full amount determined in paragraph 1 shall be payable within 3 months of 1 January 1995.

5. Within 3 months after the end of the financial year or the first financial year:

(a) the competency institution of Australia shall provide the competent institution of New Zealand with a written reconciliation statement covering the amounts estimated as payable under paragraph 1 and the amounts actually reimbursable in that financial year; and

(b) the competent institution of New Zealand shall provide the competent institution of Australia with a written reconciliation statement covering the amounts estimated as payable under paragraph 1 and the amounts actually reimbursable in that financial year.

6. If the reconciliation statements referred to in paragraph 5 show that an amount is payable by one Party to the other to balance the payments in the relevant financial year, then that amount shall be paid, together with any interest payable under paragraph 7, at the time of the next quarterly payment referred to in paragraph 3.

7. If at the end of a financial year a Party is required to make a payment to the other Party under paragraph 6, then interest will be payable on the total amount outstanding. The total interest payable shall be the sum of the four amounts of interest payable in respect of each quarterly reimbursement period referred to in paragraph 3, calculated using the formula in paragraph 8.

8. In respect of each quarterly reimbursement period referred to in paragraph 3, the interest payable under paragraph 7 shall be calculated on the following basis:

 Interest Payable = NP x (N x I)/365

 where:

NP = Nominal payment equal to one quarter of the amount payable by a Party to the other to balance the payments in the relevant financial year.

N = The number of days between the date at which the nominal payment would have been paid if no estimation error had occurred (ie, the commencement of the relevant quarter) and the date the payment is settled.

I = The relevant interest rate referred to in paragraph 9.

9. For the purposes of paragraph 8, the “relevant interest rate” shall be:

(a) in the case of refunds made by the Government of Australia, the 26 week New Zealand Government Treasury Bill rate expressed in per annum terms obtained in the regular Treasury Bill auction closest in time to when the nominal payment would have been paid if the estimation under paragraph 1 had been exact; and

(b) in the case of refunds made by the Government of New Zealand, the 180 day Australian Government Treasury Bill rate expressed in per annum terms applicable at the time the nominal payment would have been paid if the estimation under paragraph 1 had been exact.

10. Any interest payable under paragraph 7 in respect of a financial year shall be payable at the same time as the payment under paragraph 6.

11. For administrative purposes, the gross quarterly amounts payable by each Party (comprising the estimated reimbursable amount for the next quarter under paragraph 3 and any nominal payment under paragraph 6 and associated interest payments under paragraph 7) shall be netted between the two Parties.

12. For the purposes of netting in paragraph 11, the relevant cross rate between the Australian dollar and the New Zealand dollar shall be determined by using the mid‑rates as quoted at 3 pm on the ASAP page of Reuters, or equivalent page, 5 working days prior to the relevant quarterly settlement date.

13. For net payment purposes, the Government of Australia shall reimburse the Government of New Zealand in New Zealand dollars and the Government of New Zealand shall reimburse the Government of Australia in Australian dollars.

14. If a Party has forwarded to the other Party a reconciliation statement referred to in paragraph 5, that Party shall not be entitled to claim any further reimbursement for benefit payments made in that financial year.

15. At any time, on the agreement of the Parties, the procedures under this Article may be modified or substituted by an exchange of notes.

**PART IV—MISCELLANEOUS PROVISIONS**

Article 15

Benefits for the Unemployed

1. This Article applies to any person who is in the territory of a Party and whose right to remain in that territory is dependent upon that person being:

(a) in the case of New Zealand, an Australian citizen or a former Australian resident; and

(b) in the case of Australia, a New Zealand citizen.

2. Subject to paragraph 3, a person to whom this Agreement applies shall not be eligible to receive benefits for the unemployed from a Party unless the person:

(a) has been continuously present in the territory of that Party for not less than 6 months since the date of his or her most recent arrival in that territory; and

(b) meets those criteria which are specified for that benefit by the legislation of that Party.

3. This Article shall not apply to a person who has been:

(a) in relation to Australia, an Australian resident; or

(b) in relation to New Zealand, ordinarily resident in New Zealand,

 for the period of 12 months immediately before the date on which the person lodges a claim for a benefit for the unemployed in, respectively, Australia or New Zealand.

4. For the purposes of this Article only, benefits for the unemployed means, in relation to Australia:

(i) job search allowance;

(ii) newstart allowance; and

(iii) young homeless allowance; and

 in relation to New Zealand:

(i) unemployment benefit;

(ii) job search allowance;

(iii) training benefit; and

(iv) independent youth allowance.

Article 16

Mutual Assistance and Exchange of Information

1. The competent authorities and competent institutions responsible for the application of this Agreement:

(a) shall communicate to the other Party, in relation to each benefit granted by that Party and which is reimbursable under Article 11, all the information required to:

(i) verify that the person in receipt of that benefit is eligible to receive it under the legislation of the Party granting the benefit;

(ii) verify that the person in receipt of that benefit would be eligible for the corresponding benefit if he or she was resident in Australia or ordinarily resident in New Zealand, as the case may be;

(iii) verify that the amount of benefit paid is the amount payable;

(iv) determine the rate of the corresponding benefit that would be payable if the person in receipt of the benefit were resident in Australia or ordinarily resident in New Zealand as the case may be; and

(v) determine the amount of benefit that is reimbursable under Article 11;

(b) shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation in so far as these changes affect the application of this Agreement; and

(c) at the request of one to the other, assist each other in relation to the implementation of Agreements on social security entered into by either of the Parties with third states, to the extent and in the circumstances specified in the administrative arrangement made pursuant to Article 17.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any administrative arrangement made pursuant to Article 17.

3. Unless disclosure is required or permitted under the laws of a Party, any information about an individual which is transmitted in accordance with this Agreement to a competent authority or competent institution of that Party by a competent authority or a competent institution of the other Party is confidential and shall be used only for purposes of implementing this Agreement and the social security laws of either Party.

4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the competent authority or competent institution of a Party the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practices of that or the other Party; or

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of either Party.

5. Communication between the Parties, including the exchange of information may be conducted by electronic data transfer should the Parties so agree in an exchange of letters at any time.

6. The competent authorities of the Parties shall exchange such information as is necessary for the operation of this Agreement or of the social security laws of the Parties concerning all matters arising under this Agreement, apart from matters relating to maintenance payments or liable parent contributions.

Article 17

Administrative Arrangement

The competent authorities of the Parties shall make whatever administrative arrangements are necessary in order to implement this Agreement.

Article 18

Recovery of Overpayments

1. Where:

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

(b) a benefit is payable by the other Party to that person, whether by virtue of this Agreement or otherwise,

 the competent institution of that other Party shall, if requested by the other competent institution to do so, and in accordance with this Article, deduct the amount equivalent to the excess payment referred to in subparagraph (a) from the amount due in respect of the last mentioned benefit.

2. The amount of an excess payment referred to in paragraph 1 shall be the amount determined by the competent institution of the Party by whom the excess payment was made.

3. The rate of deductions made in accordance with paragraph 1 from amounts due in respect of a benefit, and any incidental or related matters, shall be determined by the competent institution of the Party by whom the benefit is payable, in accordance with the legislation or practice of that Party.

4. Amounts deducted by the competent institution of one of the Parties in accordance with paragraph 1, and any amounts received by that competent institution pursuant to arrangements referred to in paragraph 3, shall be remitted to the other competent institution as agreed between the competent institutions or in any administrative arrangement made pursuant to Article 17.

5. For the purposes of this Article, “benefit” shall also include:

 in relation to New Zealand:

(a) unemployment benefit;

(b) sickness benefit;

(c) transitional retirement benefit;

(d) independent youth benefit;

(e) job search allowance;

(f) training benefit;

(g) domestic purposes benefit for caregivers and women alone;

(h) orphans benefit; and

(i) unsupported child’s benefit; and

 in relation to Australia:

(a) job search allowance;

(b) newstart allowance;

(c) sickness allowance;

(d) carer pension;

(e) double orphans pension; and

(f) family payments.

Article 19

Resolution of Difficulties

1. The competent authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.

2. The Parties shall consult promptly at the request of either concerning matters which have not been resolved by the competent authorities in accordance with paragraph 1.

Article 20

Review of the Agreement

1. The Parties may agree at any time to review the whole or any part of this Agreement.

2. Subject to paragraph 1, the Parties shall meet for the purpose of reviewing the implementation of this Agreement within 12 months of the Agreement coming into force.

3. Where a Party amends, supplements or replaces its legislation, the Parties shall consult on any consequence of that change to the legislation and on the continuing implementation of the Agreement including on whether any amendment to the Agreement is necessary.

4. Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the territory of the Party to which that request was made.

**PART V—FINAL PROVISIONS**

Article 21

Transitional Provisions

1. Subject to this Agreement, in determining the eligibility of a person for a benefit payable by virtue of this Agreement, or in determining the reimbursement liability of a Party:

(a) a period as an Australian resident and a period during which a person was ordinarily resident in New Zealand; and

(b) any event or fact which is relevant to that eligibility,

 shall be taken into account in so far as those periods or those events are applicable in regard to that person, no matter when they were accumulated or occurred.

2. The start date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but shall never be earlier than the date on which this Agreement enters into force.

3. If this Agreement does not come into force on 1 January 1995, the Parties shall reimburse each other from 1 January 1995, at the rate provided under Article 12 of this Agreement, but only to the amount provided under Article 13, for all benefits granted before the Agreement comes into force that meet the criteria for reimbursement under Article 12 of this Agreement.

4. Any right to a benefit outside the scope of this Agreement acquired by a person in accordance with the provisions of the Agreement signed at Canberra on 31 October 1988 shall continue.

5. Subject to this Agreement, when this Agreement comes into force, the Agreement between the Government of Australia and the Government of New Zealand providing for Reciprocity in Matters relevant to Social Security signed at Canberra on 31 October 1988 shall terminate and persons who were receiving benefits by virtue of that 1988 Agreement shall receive those benefits by virtue of this Agreement.

Article 22

Entry into Force and Termination

1. This Agreement shall come into force on 1 January 1995 if, before that date, the Parties have notified each other by exchange of notes through the diplomatic channel that all requirements that are necessary to give effect to this Agreement in their law have been met. Otherwise it shall come into force on the first day of the second month following the month in which the exchange of notes took place.

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a written notice through the diplomatic channel indicating the intention of either Party to terminate this Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who:

(a) at the date of termination, are in receipt of benefits; or

(b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be eligible to receive, benefits.

4. In the event that this Agreement is terminated in accordance with paragraph 2, the reimbursement provisions of this Agreement shall also continue to apply to all benefits payable at the time of the expiry of the 12 months mentioned in that paragraph.

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

DONE in duplicate at Wellington this Nineteenth day of July 1994

Peter Baldwin Peter Gresham

FOR THE FOR THE GOVERNMENT GOVERNMENT

OF AUSTRALIA OF NEW ZEALAND

[Signatures omitted]

part b

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND

WISHING to amend and supplement the Agreement on Social Security between the two States signed at Wellington on the nineteenth day of July 1994, have agreed as follows:

Article I

1. In this Protocol “Agreement” means the Agreement between the Government of New Zealand and the Government of Australia on Social Security signed on the nineteenth day of July 1994 at Wellington.

2. In the application of this Protocol (the first Protocol to the Agreement) any term defined in the Agreement shall, unless the context otherwise requires, have the same meaning.

3. In the application of this Protocol any term not defined in the Agreement or this Protocol shall, unless the context otherwise requires, have the meaning assigned to it by the legislation of either Party.

Article II

Subparagraph (j) of paragraph 1 of Article 1 of the Agreement shall be deleted and substituted by the following:

“(j) “period of New Zealand working life residence” means,

 in relation to New Zealand, a period of ordinary residence in New Zealand between the ages of 16 and 65, but includes any period during which the person to whom it relates relied on Article 4(2)(b) of the Agreement between the Government of Australia and the Government of New Zealand providing for reciprocity in matters relating to Social Security signed at Canberra on 31 October 1988 or relies on Article 7(2)(b)(ii) or (iii) of the Agreement to be eligible for a New Zealand benefit.”

Article III

Subparagraph (a) of paragraph 1 of Article 2 of the Agreement shall be deleted and substituted by the following:

“(a) in relation to Australia: the Social Security Act 1991 in so far as the Act provides for, applies to or affects the following benefits:

(i) age pension;

(ii) disability support pension;

(iii) widow B pension;

(iv) sole parent pension;

(v) wife pension;

(vi) partner allowance payable to the female partner of a person in receipt of an age pension or a disability support pension (referred to in this Agreement as partner allowance);

(vii) parenting allowance payable to the female partner of a person in receipt of an age pension or a disability support pension (referred to in this Agreement as parenting allowance); and

(viii) additional family payment payable to persons in receipt of the above benefits; and”

Article IV

In order to clarify the original intentions of the Parties when first drafting Article 3 of the Agreement, paragraph 1 of Article 3 of the Agreement shall be deleted and substituted by the following:

“1. This Agreement shall apply to any person who:

(a) is or has been an Australian resident; or

(b) is or has been ordinarily resident in the territory of New Zealand; and

 to any other person who derives rights to a benefit from a person who is eligible for a benefit under this Agreement.”

Article V

Subparagraph (b) of paragraph 1 of Article 12 of the Agreement shall be deleted and substituted by the following:

“(b) by multiplying the nominal benefit rate (as calculated below) by the smaller of:

(i) the result obtained under subparagraph (a); or

(ii) one.”

Article VI

Paragraph 3 of Article 14 of the Agreement shall be deleted and substituted by the following:

“3. Subject to paragraph 4, the amount determined in paragraph 1 shall be payable in equal quarterly instalments by the competent institution of a Party to the competent institution of the other Party on 1 July, 1 October, 1 January and 1 April or, if those dates are not banking days, on the first banking day thereafter.”

Article VII

Paragraph 4 of Article 15 of the Agreement shall be deleted and substituted by the following:

“4. For the purposes of this Article only, benefits for the unemployed means, in relation to Australia:

(i) job search allowance; and

(ii) newstart allowance; and

 in relation to New Zealand:

(i) unemployment benefit;

(ii) job search allowance;

(iii) training benefit; and

(iv) independent youth allowance.”

Article VIII

Upon an exchange of notes by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Protocol have been finalised, this Protocol shall be deemed to have entered into force on 1 January 1995, except for Article III which shall be deemed to have entered into force on 1 July 1995.

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

DONE in duplicate at Sydney this seventh day of September 1995.

FOR THE FOR THE GOVERNMENT GOVERNMENT

OF AUSTRALIA OF NEW ZEALAND

PETER BALDWIN GRAHAM FORTUNE

[Signatures omitted]

part C

THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND

WISHING to amend and supplement the Agreement on Social Security between the two States signed at Wellington on the nineteenth day of July 1994, have agreed as follows:

Article I

1. In this Protocol “Agreement” means the Agreement between the Government of New Zealand and the Government of Australia on Social Security signed on the nineteenth day of July 1994 at Wellington as amended by the first Protocol signed on the seventh day of September 1995 at Sydney.

2. In the application of this Protocol (the second Protocol to the Agreement) any term defined in the Agreement shall, unless the context otherwise requires, have the same meaning.

3. In the application of this Protocol any term not defined in the Agreement or this Protocol shall, unless the context otherwise requires, have the meaning assigned to it by the legislation of either Party.

Article II

1. The heading to Article 7 of the Agreement shall be amended to read “Eligibility for New Zealand Benefits”.

2. Paragraphs 4 and 5 of Article 7 of the Agreement shall be deleted and the remaining paragraph shall be renumbered as paragraph 4.

Article III

1. The heading to Article 8 of the Agreement shall be amended to read “Eligibility for Australian Benefits”.

2. Paragraphs 4 and 5 of Article 8 of the Agreement shall be deleted and the remaining paragraphs shall be renumbered as paragraphs 4, 5 and 6.

Article IV

A new Article shall be inserted after Article 8 of the Agreement, to read as follows:

“Article 8A

Portability of Benefits

 *New Zealand benefits*

1. Except as provided in paragraphs 2 and 3, the temporary absence provisions under the legislation of New Zealand shall apply to a person who is receiving a New Zealand benefit under this Agreement.

2. A person who is in receipt of New Zealand Superannuation and who is present in Australia but not an Australian resident, shall be eligible to continue to receive that benefit for up to 26 weeks:

(a) where that person is temporarily absent from New Zealand for up to 26 weeks; or

(b) where that person is temporarily absent from New Zealand for over 26 weeks and in the opinion of the New Zealand Competent Authority that person has sufficient reason for remaining outside New Zealand for more than 26 weeks.

3. A person who is in receipt of an invalid’s benefit, a widow’s benefit or a domestic purposes benefit and who is present in Australia but not an Australian resident, shall be eligible to continue to receive that benefit for up to 4 weeks during a temporary absence from New Zealand.

 *Australian benefits in New Zealand*

4. A person who, by virtue of this Agreement or otherwise, is in receipt of an age pension and who is present but not ordinarily resident in New Zealand, shall be eligible to continue to receive that benefit for up to 26 weeks during a temporary absence from Australia.

5. A person who, by virtue of this Agreement or otherwise, is in receipt of a disability support pension, a wife pension, a widow B pension or a sole parent pension and who is present but not ordinarily resident in New Zealand, shall be eligible to continue to receive that benefit for up to 4 weeks during a temporary absence from Australia.

6. A person who, by virtue of this Agreement or otherwise, is in receipt of a partner or parenting allowance and who is present but not ordinarily resident in New Zealand, shall be eligible to continue to receive that benefit during a temporary absence from Australia for the period allowed under the legislation of Australia, except where the partner of that person is in receipt of a disability support pension in which case the person shall be eligible to receive his or her benefit for up to 4 weeks during a temporary absence from Australia.

 *Australian benefits in a Third Country*

7. A person who, by virtue of this Agreement, is in receipt of an age pension and who is not present or ordinarily resident in New Zealand shall be eligible to continue to receive that benefit for up to 26 weeks during a temporary absence from Australia.

8. A person who, by virtue of this Agreement, is in receipt of a disability support pension, a wife pension, a widow B pension, or a sole parent pension who is not present or ordinarily resident in New Zealand shall be eligible to continue to receive that benefit for up to 4 weeks during a temporary absence from Australia.

9. A person who, by virtue of this Agreement, is in receipt of a partner or parenting allowance who is not present or ordinarily resident in New Zealand shall be eligible to continue to receive that benefit during a temporary absence from Australia for the period allowed under the legislation of Australia, except where the partner of that person is in receipt of a disability support pension in which case the person shall be eligible to receive his or her benefit for up to 4 weeks during a temporary absence from Australia.

 *Dual Payments*

10. A person who is in New Zealand shall not be eligible for any pension, benefit or allowance paid under the social security laws of Australia where that person would otherwise be eligible for a New Zealand benefit under this Agreement or any payment (other than an emergency benefit, a special benefit or a benefit payable in respect of specified costs) under the social security laws of New Zealand.

11. A person who is in Australia shall not be eligible for any payment made under the social security laws of New Zealand where that person is eligible for an Australian benefit under this Agreement or any payment made under the social security laws of Australia.

Article V

1. Subparagraph (e) of paragraph 1 of Article 11 of the Agreement shall be deleted and substituted by the following:

“(e) is an Australian resident or is in receipt of a benefit by virtue of Article 8 or Article 8A; and”

2. Subparagraph (e) of paragraph 2 of Article 11 of the Agreement shall be deleted and substituted by the following:

“(e) is ordinarily resident in New Zealand or is in receipt of a benefit by virtue of Article 7 or Article 8A; and”

3. Paragraph 5 of Article 11 of the Agreement shall be deleted and substituted by the following:

“5. Neither Party shall be required to reimburse the other Party for a benefit paid to a person who is outside the territory of the Party paying the benefit except:

(a) during a period of absence as provided in Article 8A; and

(b) in the case of a benefit which is not paid by virtue of this Agreement and is not paid into the territory of either Party, for a period up to:

(i) 26 weeks for age pension and New Zealand superannuation;

(ii) 13 weeks for partner and parenting allowance payable to the partner of a person in receipt of an age pension; and

(iii) 4 weeks for all other benefits.”

Article VI

This Protocol shall enter into force on the first day of the month following the month in which notes are exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Protocol have been finalised.

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

DONE in duplicate at Sydney this seventh day of September 1995.

FOR THE FOR THE GOVERNMENT GOVERNMENT

OF AUSTRALIA OF NEW ZEALAND

PETER BALDWIN GRAHAM FORTUNE

[Signatures omitted]

Part D

Notes dated 2 July 1998 between the Government of Australia and the Government of New Zealand agreeing that Article 15 of the Agreement is to be deleted.

No. Legal 98/290

The Department of Foreign Affairs and Trade presents its compliments to the New Zealand High Commission and has the honour to refer to the Agreement between the Government of Australia and the Government of New Zealand on Social Security, signed at Wellington on 19 July 1994, as amended by the First and Second Protocols to the Agreement between the Government of Australia and the Government of New Zealand on Social Security of 7 September 1995 (“the Agreement”) and to recent discussions between the Department of Social Security of Australia and the Department of Social Welfare of New Zealand concerning the need to amend the Agreement, so as to remove the provisions relating to benefits for the unemployed.

The Department of Foreign Affairs and Trade now has the honour to propose the following amendment to the Agreement:

Article 15 of the Agreement shall be deleted.

If the foregoing proposal is acceptable to the Government of New Zealand, the Department of Foreign Affairs and Trade has the honour to propose that this Note and the New Zealand High Commission’s reply to that effect, shall constitute an Agreement between the Government of Australia and the Government of New Zealand which shall enter into force on the first day of September 1998 provided that prior to that date the Government of Australia and the Government of New Zealand have exchanged further notes through the diplomatic channel notifying each other that all other matters as are necessary to give effect to this Agreement have been finalised or if that notification has not been completed prior to 1 September 1998, on the first day of the second month after that notification has been completed.

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

CANBERRA

2 July 1998

A/NZ/2/4/2

 The New Zealand High Commission presents its compliments to the Department of Foreign Affairs and Trade and has the honour to refer to the Department’s Note No Legal 98/290 of 2 July which reads as follows:

 The Department of Foreign Affairs and Trade presents its compliments to the New Zealand High Commission and has the honour to refer to the Agreement between the Government of Australia and the Government of New Zealand on Social Security, signed at Wellington on 19 July 1994, as amended by the First and Second Protocols to the Agreement between the Government of Australia and the Government of New Zealand on Social Security of 7 September 1995 (“the Agreement”) and to recent discussions between the Department of Social Security of Australia and the Department of Social Welfare of New Zealand concerning the need to amend the Agreement, so as to remove the provisions relating to benefits for the unemployed.

 The Department of Foreign Affairs and Trade now has the honour to propose the following amendment to the Agreement:

Article 15 of the Agreement shall be deleted.

 If the foregoing proposal is acceptable to the Government of New Zealand, the Department of Foreign Affairs and Trade has the honour to propose that this Note and the New Zealand High Commission’s reply to that effect, shall constitute an Agreement between the Government of Australia and the Government of Zealand which shall enter into force on the first day of September 1998 provided that prior to that date the Government of Australia and the Government of New Zealand have exchanged further notes through the diplomatic channel notifying each other that all other matters as are necessary to give effect to this Agreement have been finalised or if that notification has not been completed prior to 1 September 1998, on the first day of the second month after that notification has been completed.

 The New Zealand High Commission has further the honour to confirm that the above is acceptable to the Government of New Zealand and that the Department’s Note and this reply shall constitute an Agreement Between the Government of New Zealand and the Government of Australia which shall enter into force on the first day of September 1998 provided that prior to that date the Government of New Zealand and the Government of Australia have exchanged further notes through the diplomatic channel notifying each other that all other matters as are necessary to give effect to this Agreement have been finalised or that if notification has not been completed prior to 1 September 1998, on the first day of the second month after that notification has been completed.

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

New Zealand High Commission

CANBERRA

2 July 1998

# Schedule 4—Canada

Note: See section 5.

PART A

RECIPROCAL AGREEMENT ON SOCIAL SECURITY between THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF CANADA

The Government of Australia and the Government of Canada,

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

Resolved to co‑operate in the field of social security,

Have agreed as follows:

PART I—INTERPRETATION AND SCOPE

ARTICLE 1

Interpretation

1. In this Agreement:

 “benefit” means, in relation to a Party, a benefit for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that benefit, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

 “Canadian creditable period” means a period, or the total of two or more periods, of residence or contributions which has been or can be used to acquire the right to a Canadian benefit, but does not include any period considered under paragraph 2 of Article 10 as a Canadian creditable period;

 “carer’s pension” means a carer’s pension payable to a spouse under the legislation of Australia;

 “competent authority” means, in relation to Australia, the Secretary to the Department of Social Security and, in relation to Canada, the Minister of National Health and Welfare;

 “Government of Canada” means the Government in its capacity as representative of Her Majesty the Queen in right of Canada and represented by the Minister of National Health and Welfare;

 “legislation” means, in relation to a Party, the laws specified in Article 2 in relation to that Party;

 “period of residence in Australia”, in relation to a person, means a period defined as such in the social security laws of Australia, but does not include any period deemed pursuant to Article 6 to be a period in which that person was an Australian resident;

 “social security laws” means:

(i) in relation to Australia, the Social Security Act 1947 as amended, not including amendments effected by laws made for the purpose of giving effect to an agreement on social security; and

(ii) in relation to Canada, the laws specified in subparagraph 1 (b) of Article 2;

 “widow “ means, in relation to Australia:

(i) a de jure widow; or

(ii) a woman who, for not less than 3 years immediately prior to the death of a man, lived with him on a permanent basis as his de facto spouse and was wholly or mainly maintained by him,

 but does not include a woman who is the de facto spouse of a man.

2. In the application by a Party of this Agreement to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the social security laws of either Party or, in the event of a conflict of meaning, by whichever of those laws is the more applicable to the circumstances of that person.

ARTICLE 2

Legislative Scope

1. Subject to paragraphs 2 and 3, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:

(a) in relation to Australia, the *Social Security Act 1947* to the extent that the Act provides for and applies to:

(i) age pensions;

(ii) invalid pensions;

(iii) wives’ pensions;

(iv) carers’ pensions; and

(v) pensions payable to widows; and

(b) in relation to Canada:

(i) the Old Age Security Act and the regulations made thereunder; and

(ii) the Canada Pension Plan and the regulations made thereunder.

2. In relation to Australia, the legislation to which this Agreement applies shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security.

3. This Agreement shall apply to laws of a Party which extend the existing legislation of that Party to new categories of beneficiaries unless the competent authority of that Party communicates in writing an objection in regard to those laws to the competent authority of the other Party prior to the commencement of those laws.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

(a) is or has been an Australian resident; or

(b) is residing or has resided in Canada within the meaning of the Old Age Security Act or is making or has made contributions under the Canada Pension Plan

and, where applicable, to any spouse, dependent or survivor of such a person.

ARTICLE 4

Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

PART II—PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 5

Residence or Presence in Canada or a Third State

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not an Australian resident and in Australia on the date on which he or she lodges a claim for that benefit but he or she:

(a) is an Australian resident or residing in Canada or a third State with which Australia has concluded an agreement on social security that includes provision for co‑operation in the assessment and determination of claims for benefits; and

(b) is in Australia, Canada or that third State, that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

2. Paragraph 1 shall not apply to a claimant for a wife’s pension or carer’s pension who has never been an Australian resident.

ARTICLE 6

Totalisation in relation to Australian Benefits

1. Where a person has been an Australian resident for a period that is:

(a) less than the period as an Australian resident required to qualify him or her under the legislation of Australia for a benefit; and

(b) equal to or greater than the minimum period identified in accordance with paragraph 6 for that person,

 but has accumulated both a period of residence in Australia and a Canadian creditable period which, when added together, are equal to or greater than the minimum period required for qualification for that benefit by the legislation of Australia, that Canadian creditable period shall be deemed, for the purposes of a claim for that benefit, to be a period in which that person was an Australian resident.

2. In the case of a claim by a person for an invalid pension or pension payable to a widow, paragraph 1 shall apply only to a Canadian creditable period accumulated by that person under the Canada Pension Plan.

3. For the purposes of a claim by a person for a pension payable to a widow, that person shall, subject to Article 9, be deemed to have accumulated a Canadian creditable period for any period for which her spouse accumulated a creditable period under the Canada Pension Plan but any period during which the person and her spouse both accumulated Canadian creditable periods under the Canada Pension Plan shall be taken into account once only.

4. For the purposes of paragraph 1, where a person:

(a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and

(b) has accumulated a Canadian creditable period in two or more separate periods that exceed in total the minimum period referred to in subparagraph (a),

 the total of the Canadian creditable periods shall be deemed to be one continuous period.

5. For the purposes of this Article:

(a) where a period of residence in Australia and a Canadian creditable period coincide, the period of coincidence shall be taken into account once only as a period in which that person was an Australian resident; and

(b) a Canadian creditable period accumulated under the Old Age Security Act which coincides with a Canadian creditable period accumulated under the Canada Pension Plan shall be taken into account once only.

6. The minimum period of residence in Australia which a person must have accumulated before paragraph 1 applies shall be as follows:

(a) for an Australian benefit other than an invalid pension, the minimum period required shall be one year of which at least 6 months must be continuous; and

(b) for an invalid pension, the minimum period required shall be 2 years of which at least 6 months must be continuous.

ARTICLE 7

Australian Pro‑Rata Benefits

1. Where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside Australia, the rate of that benefit shall be determined according to the social security laws of Australia but:

(a) disregarding in the computation of his or her income the guaranteed income supplement under the Old Age Security Act and the portion of the spouse’s allowance under that Act equivalent to the guaranteed income supplement and other Canadian federal, provincial or territorial payments of a similar character as mutually determined from time to time in letters exchanged between the Ministers respectively administering the legislation of Australia and Canada; and

(b) by assessing as income to that person only a proportion of any other benefit received by that person under the legislation of Canada calculated by multiplying the number of whole months, plus one, accumulated by that person in a period of residence in Australia, but not exceeding 300, by the amount of that benefit and dividing that product by 300.

2. Where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined according to the legislation of Australia but, subject to paragraph 5, disregarding in the computation of his or her income any Canadian benefit which that person is entitled to receive, and deducting the amount of that Canadian benefit from the rate of Australian benefit which would otherwise be payable to that person.

3. Where the rate of a benefit calculated in accordance with paragraph 2 is less than the rate of that benefit which would be payable under paragraph 1 if the person concerned were outside Australia, the first‑mentioned rate shall be increased to an amount equivalent to the second‑mentioned rate.

4. For the purposes of paragraph 3, a comparison of the rates of a benefit determined in accordance with paragraphs 1 and 2 shall be made as at:

(a) the date of the first pension pay‑day occurring after the date on which the claim for the benefit was lodged; and

(b) each anniversary of that pension pay‑day for so long as the person concerned is entitled to the benefit, using, in that comparison, the number of months in the period of residence in Australia accumulated by the person at the date as at which the comparison is made.

5. For the purposes of paragraph 2, where one or other, or both, of a person and his or her spouse are entitled to receive a Canadian benefit, the total of the Canadian benefits payable to that person and his or her spouse shall be apportioned equally between them and disregarded in the computation of their respective incomes, and the amount so apportioned shall be deducted from the amount of Australian benefit that would otherwise be payable to each of them.

6. An Australian benefit that is payable only by virtue of this Agreement to a person who:

(a) was an Australian resident on 8 May 1985; and

(b) commences to receive that benefit before 1 January 1996

 shall be paid, during any absence of that person from Australia that commences before 1 January 1996, at a rate calculated in accordance with paragraphs 2 and 3.

7. As soon as practicable after an exchange of letters in which Canadian federal, provincial or territorial payments are mutually determined for the purposes of subparagraph 1 (a), the Minister administering the legislation of Australia shall cause to be published in the Commonwealth of Australia Gazette a notice specifying those Canadian payments.

ARTICLE 8

Wives’ Pensions and Carers’ Pensions

For the purposes of this Agreement, a person who receives an Australian wife’s pension or carer’s pension due to the fact that the spouse of that person receives, by virtue of this Agreement, an Australian benefit shall be deemed to receive that pension by virtue of this Agreement.

ARTICLE 9

Pensions Payable to Widows

Where, under the legislation of Australia, a widow lodges a claim for a pension payable to a widow, matters which concern her former spouse and affect that claim shall be considered for the purposes of that claim by reference only to her last‑deceased spouse who was her husband or was a man in respect of whom she satisfies the conditions specified in subparagraph (ii) of the definition of “widow” in Article 1.

PART III—PROVISIONS RELATING TO CANADIAN BENEFITS

ARTICLE 10

Totalising of Periods for Purposes of the Legislation of Canada

1. Subject to paragraph 3, if a person is not entitled to a benefit on the basis of his or her Canadian creditable periods, eligibility for that benefit shall be determined by totalising these periods and those specified in paragraph 2.

2.

(a) For the purposes of determining eligibility for a benefit under the Old Age Security Act, a period of residence in Australia shall be considered as a period of residence in Canada.

(b) For the purposes of determining eligibility for a benefit under the Canada Pension Plan, a calendar year which includes a period of residence in Australia of at least 6 calendar months shall be considered as a year for which contributions have been made under the Canada Pension Plan.

3. For the purposes of this Article, where a Canadian creditable period and a period of residence in Australia coincide, the period of coincidence shall be taken into account once only as a Canadian creditable period.

ARTICLE 11

Benefits under the Old Age Security Act

1. (a) If a person is entitled to payment of a pension in Canada under the Old Age Security Act without recourse to the provisions of this Agreement, but has not accumulated sufficient periods of residence in Canada to qualify for payment of the pension abroad under that Act, a partial pension shall be paid to that person outside Canada if the Canadian creditable period accumulated under the Old Age Security Act and period of residence in Australia, when totalised as provided in Article 10, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for payment of a pension abroad.

 (b) The amount of the pension payable shall, in this case, be calculated under the provisions of the Old Age Security Act governing the payment of a partial pension, exclusively on the basis of the periods creditable under that Act.

2. (a) If a person is not entitled to a pension or spouse’s allowance under the Old Age Security Act solely on the basis of periods of residence in Canada, a partial pension or a spouse’s allowance shall be paid to that person if the Canadian creditable period accumulated under that Act and period of residence in Australia, when totalised as provided in Article 10 are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for payment of a pension or a spouse’s allowance.

 (b) The amount of the pension or the spouse’s allowance payable shall, in this case, be calculated under the provisions of the Old Age Security Act governing the payment of a partial pension or a spouse’s allowance, exclusively on the basis of the periods creditable under that Act.

3. Notwithstanding any other provision of this Agreement:

(a) the competent authority of Canada shall not pay a pension under the Old Age Security Act to a person outside Canada unless his or her Canadian creditable period accumulated under that Act and period of residence in Australia, when totalised as provided in Article 10, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for payment of a pension abroad;

(b) a spouse’s allowance shall not be payable by virtue of this Agreement to a person who has not accumulated a Canadian creditable period of at least one year under the Old Age Security Act; and

(c) a spouse’s allowance and a guaranteed income supplement shall be paid outside Canada only to the extent permitted by the Old Age Security Act.

ARTICLE 12

Benefits under the Canada Pension Plan

1. If a person is not entitled to a disability pension, disabled contributor’s child’s benefit, survivor’s pension, orphan’s pension or death benefit solely on the basis of the periods creditable under the Canada Pension Plan, but is entitled to that benefit through the totalising of periods as provided in Article 10, the competent authority of Canada shall calculate the amount of the earnings‑related portion of such benefit under the provisions of the Canada Pension Plan, exclusively on the basis of the pensionable earnings under the Canada Pension Plan.

2. The amount of the flat‑rate portion of the benefit payable by virtue of this Agreement shall, in a case referred to in paragraph 1, be determined by multiplying:

(a) the amount of the flat‑rate portion of the benefit determined under the *Canada Pension Plan*

 by

(b) the fraction which represents the ratio of the periods of contributions to the *Canada Pension Plan* in relation to the minimum qualifying period required under the *Canada Pension Plan* for entitlement to that benefit,

 but in no case shall that fraction exceed the value of one.

PART IV—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 13

Lodgement of Documents

1. The date on which a claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Party is lodged with the competent authority of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of that document with the competent authority of the first Party.

2. In relation to Australia, the reference in paragraph 1 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia.

ARTICLE 14

Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:

(a) a period as an Australian resident and a Canadian creditable period; and

(b) any event which is relevant to that eligibility or entitlement

 shall, subject to this Agreement, be taken into account to the extent that those periods or those events are applicable in regard to that person and whether they were accumulated or occurred before or after the date on which this Agreement enters into force.

2. No provision of this Agreement shall confer any right to receive payment of a benefit for a period before the date of entry into force of this Agreement.

3. A death benefit under the Canada Pension Plan shall not be paid by virtue of this Agreement in respect of a death which occurred before the date of entry into force of this Agreement.

4. Where:

(a) the competent authority of Canada pays a benefit to a person in respect of a past period;

(b) for all or part of that period, the competent authority of Australia has paid to that person a benefit under the legislation of Australia; and

(c) the amount of the Australian benefit would have been varied had the Canadian benefit been paid during that period,

 then

(d) the amount that would not have been paid by the competent authority of Australia had the Canadian benefit been paid on a periodical basis from the date to which the arrears of benefit referred to in subparagraph (a) were paid shall be a debt due by that person to Australia; and

(e) the competent authority of Australia may determine that the amount, or any part, of that debt may be deducted from future payments of a benefit to that person.

5. In paragraph 4, “benefit” means, in relation to Australia, a pension, benefit or allowance that is payable under the Social security laws of Australia.

ARTICLE 15

Payment of Benefits

1. The payment outside Australia of an Australian benefit payable by virtue of this Agreement shall not be restricted by those provisions of the social security laws of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.

2. A carer’s pension as defined in this Agreement, whether payable by virtue of this Agreement or otherwise, shall be paid within Australia and Canada.

3. A benefit payable by virtue of this Agreement shall be paid without deduction for administrative fees and charges.

ARTICLE 16

Exchange of Information and Mutual Assistance

1. The competent authorities shall:

(a) notify each other of laws that amend, supplement or replace the social security laws of their respective Parties promptly after the first‑mentioned laws are made;

(b) communicate to each other any information necessary for the application of this Agreement or of the respective social security laws of the Parties concerning all matters arising under this Agreement or under those laws;

(c) lend their good offices and furnish assistance to one another with regard to the determination or payment of any benefit under this Agreement or any other entitlement under the respective social security laws as if the matter involved the application of their own laws; and

(d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 17.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the competent authorities for the reimbursement of certain types of expenses.

3. Any information about a person which is transmitted in accordance with this Agreement to a competent authority shall be protected in the same manner as information obtained under the social security laws of that Party and shall be disclosed only in the manner permitted by the laws of that Party.

4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the competent authority of a Party the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party; or

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administrative practice of that or the other Party.

ARTICLE 17

Administrative Arrangements

The competent authorities of the Parties shall make whatever administrative arrangements are necessary from time to time to implement this Agreement.

ARTICLE 18

Language of Communication

In the application of this Agreement, the competent authority of a Party may communicate directly with the other competent authority in any official language of that Party.

ARTICLE 19

Understandings with a Province of Canada

The relevant authority of Australia and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada provided that those understandings are not inconsistent with the provisions of this Agreement.

ARTICLE 20

Resolution of Difficulties

1. The competent authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.

2. The Parties shall consult promptly at the request of either concerning matters which have not been resolved by the competent authorities in accordance with paragraph 1.

3. Any dispute between the Parties concerning the interpretation of this Agreement which has not been resolved or settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration.

4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators so appointed shall appoint a third who shall act as president; provided that if the two arbitrators fail to agree, the President of the International Court of Justice shall be requested to appoint the president.

5. The arbitrators shall determine their own procedures.

6. The decision of the arbitrators shall be final and binding.

ARTICLE 21

Review of Agreement

Where a party requests the other to meet to review this Agreement, representatives of the Parties shall meet no later than 6 months after that request was made and, unless the Parties otherwise mutually determine, their meeting shall be held in the territory of the Party to which that request was made.

PART V—FINAL PROVISIONS

ARTICLE 22

Entry into Force and Termination

1. This Agreement shall enter into force on a date specified in notes exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Agreement have been finalised.

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of the other Party to terminate this Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who by virtue of this Agreement:

(a) at the date of termination, are in receipt of benefits; or

(b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits.

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

DONE in two copies at Canberra this 4th day of July 1988 in the English and French languages, each text being equally authoritative.

BEN HUMPHREYS DON MAZANKOWSKI

FOR THE GOVERNMENT FOR THE GOVERNMENT

OF AUSTRALIA OF CANADA

[Signatures omitted]

Part B

PROTOCOL AMENDING THE RECIPROCAL AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF CANADA SIGNED AT CANBERRA ON THE 4TH DAY OF JULY 1988.

The Government of Australia and the Government of Canada

Desiring to amend the Reciprocal Agreement on Social Security signed by them at Canberra on the 4th day of July 1988 (in this Protocol referred to as “the Agreement”)

Have agreed as follows:

article 1

Article 1 of the Agreement is amended by omitting from paragraph 1 the definition of “widow” and substituting the following definition of “widowed person”:

“ ‘widowed person’ means, in relation to Australia, a person who:

(i) stops being a married person or becomes a single person because of the death of the person’s spouse; or

(ii) is a class B widow because of the death of her legal husband or because she is a dependent female,

but does not include a person who has a new spouse.”

article 2

Article 2 of the Agreement is amended by omitting from subparagraph 1(a)(v) the word “widows” and substituting the words “widowed persons”.

article 3

Article 6 of the Agreement is amended by:

(a) omitting from paragraphs 2 and 3 the word “widow” where appearing and substituting the words “widowed person”;

(b) omitting from paragraph 3 the word “her” where first appearing and substituting the words “the persons”;

(c) omitting from paragraph 3 the word “her” where second appearing and substituting the word “the”; and

(d) omitting paragraph 6 and substituting the following paragraph:

“6. The minimum period to be taken into account for the purposes of subparagraph 1(b) shall be as follows:

(a) for a person who is residing outside Australia;

(i) in regard to a benefit other than an invalid pension, a minimum period of residence in Australia of one year of which at least 6 months must be continuous; and

(ii) in regard to an invalid pension, a minimum period of residence in Australia of 2 years of which at least 6 months must be continuous; and

(b) for an Australian resident;

(i) in regard to a benefit other than an invalid pension, a minimum period as an Australian resident of one year of which at least 6 months must be continuous; and

(ii) in regard to an invalid pension, a minimum period as an Australian resident of 2 years of which at least 6 months must be continuous.”

article 4

Article 9 of the Agreement is deleted and the following Article is substituted:

ARTICLE 9

Pensions Payable to Widowed Persons

Where, under the legislation of Australia, a person lodges a claim for a pension payable to a widowed person, matters which concern that person’s former spouse and affect that claim shall be considered for the purposes of that claim by reference only to the last‑deceased spouse of that person.

article 5

Article 15 of the Agreement is amended by:

(a) omitting paragraph 2;

(b) renumbering paragraph 3 as paragraph 4;

(c) inserting the following new paragraphs 2 and 3:

“2. The benefits payable by virtue of this Agreement and listed in this paragraph shall be payable within and outside Australia and Canada:

(a) for Australia:

(i) age pension;

(ii) invalid pension;

(iii) wive’s pension;

(iv) a pension payable to a widowed person who became a widowed person while both the person and the spouse were Australian residents;

(v) Class “B” widow’s pension; and

(b) for Canada:

 subject to subparagraph 3(c) of Article 11, the benefits referred to in the legislation of Canada.

3. A pension payable to a widowed person or a carer’s pension, whether payable by virtue of this Agreement or otherwise, shall be paid in Australia and Canada with no limitation by time.

article 6

This Protocol, which shall form an integral part of the Agreement, shall enter into force on a date specified in notes exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Protocol have been finalized and, thereupon, this Protocol shall have effect as from the date on which the Agreement entered into force.

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

DONE in two copies at Ottawa, this 11 day of October 1990, in the English and French languages, each text being equally authoritative.

J. HUMPHREYS PERRIN BEATTY

FOR THE GOVERNMENT FOR THE GOVERNMENT

OF AUSTRALIA OF CANADA

[Signatures omitted]

# Schedule 5—Spain

Note: See section 5.

Agreement on Social Security between Australia and Spain

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

Resolved to co‑operate in the field of social security;

Have agreed as follows:

PART I—GENERAL PROVISIONS

ARTICLE 1

Definitions

1. In this Agreement, unless the context otherwise requires:

 “benefit” means in relation to a Party, a benefit for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that benefit, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

 “carer’s pension” means a carer’s pension payable to a spouse under the legislation of Australia;

 “Competent Authority” means; in relation to Australia: the Secretary to the Department of Social Security; and, in relation to Spain: the Department of Labour and Social Security;

 “Competent Institution” means; in relation to Australia: the Competent Authority for Australia; and in relation to Spain: the Institution responsible under the legislation of Spain for dealing with a claim for a Spanish benefit;

 “Institution” means; in relation to Australia: the Competent Authority for Australia; and in relation to Spain: the agency or authority responsible for the implementation of the legislation of Spain;

 “legislation” means, in relation to a Party, the laws specified in Article 2 in relation to that Party;

 “period of residence in Australia”, in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 8 to be a period in which that person was an Australian resident;

 “Spanish creditable period” means a period, or the total of two or more periods, of contributions which has been or can be used to acquire the right to a Spanish benefit, but does not include any period considered under paragraph 1 of Article 10 as a Spanish creditable period;

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

2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the legislation of either Party or, in the event of a conflict of meaning, by whichever of those laws is the more applicable to the circumstances of that person.

ARTICLE 2

Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:

(a) in relation to Australia: the Social Security Act 1947 in so far as the Act provides for and in relation to the following benefits:

(i) age pensions;

(ii) invalid pensions;

(iii) wives’ pensions;

(iv) carer’s pensions; and

(v) pensions payable to widows,

(b) in relation to Spain: the legislation relating to the General Scheme and the Special Schemes of the Social Security system as they relate to the following benefits:

(i) benefits for temporary incapacity for work in cases of common illness, maternity or non‑ industrial accident;

(ii) invalidity;

(iii) old age;

(iv) death and survivors; and

(v) unemployment benefits.

2. Notwithstanding the provisions of paragraph 1 the legislation of Australia shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any reciprocal agreement on social security entered into by either Party.

3. This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries only if the two Parties so agree in a Protocol to this Agreement.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

(a) is or has been an Australian resident; or

(b) is or has been subject to the legislation of Spain,

and where applicable, to any spouse, dependant or survivor of such a person.

ARTICLE 4

Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

ARTICLE 5

Application of Spanish Legislation

1. Where an employee or a self‑employed worker who is covered by the Social Security Schemes of Spain is sent by his firm, or goes, to undertake temporary work in Australia he or she shall continue to be covered by those Social Security Schemes so long as the period of the proposed work does not exceed 5 years.

2. If, owing to unforeseen circumstances, the period of the work extends beyond 5 years, this extension may be recognised by the Competent Authority of Spain.

PART II—PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 6

Residence or Presence in Spain or a Third State

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not an Australian resident and in Australia on the date on which he or she lodges a claim for that benefit but he or she:

(a) is an Australian resident or residing in Spain or a third State with which Australia has concluded an agreement on social security that includes provision for co‑operation in the assessment and determination of claims for benefits; and

(b) is in Australia, Spain or that third State, that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

2. Paragraph 1 shall not apply to a claimant for a wife’s pension or carer’s pension who has never been an Australian resident.

ARTICLE 7

Spouse‑related Australian Benefits

For the purposes of this Agreement, a person who receives an Australian benefit due to the fact that the spouse of that person receives by virtue of this Agreement another Australian benefit, shall be deemed to receive that first‑mentioned benefit by virtue of this Agreement.

ARTICLE 8

Totalisation for Australia

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

(a) a period as an Australian resident that is less than the period required to qualify him or her, on that ground, under the legislation of Australia for that Australian benefit; and

(b) a period of residence in Australia equal to or greater than the minimum period identified in accordance with paragraph 4 for that person;

 and has accumulated a Spanish creditable period then for the purposes of a claim for that Australian benefit, that Spanish creditable period shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in legislation of Australia, to be a period in which that person was an Australian resident.

2. For the purposes of paragraph 1, where a person:

(a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and

(b) has accumulated a Spanish creditable period in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a),

 the total of the Spanish creditable periods shall be deemed to be one continuous period.

3. For all purposes of this Article, where a period by a person as an Australian resident and a Spanish creditable period accumulated by that person coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

4. The minimum period of residence in Australia to be taken into account for the purposes of paragraph 1 shall be as follows:

(a) for the purposes of an Australian benefit that is payable to a person residing outside Australia, the minimum period required shall be one year, of which at least six months must be continuous; and

(b) for the purposes of an Australian benefit that is payable to an Australian resident there shall be no minimum period of residence in Australia.

ARTICLE 9

Calculation of Australian Benefits

1. Where an Australian benefit is payable by virtue of this Agreement, to a person outside of Australia, the rate of that benefit shall be determined according to the legislation of Australia.

2. Notwithstanding the provisions of the previous paragraph, when assessing the income of a person for the purposes of calculating the rate of benefit only a proportion of any Spanish benefit (or benefits) shall be regarded as income.

 That proportion shall be calculated by multiplying the total number of months of that person’s period of residence in Australia, which shall not exceed 300, by the amount of that Spanish benefit and dividing that product by 300.

3. A person who is in receipt of an Australian benefit under the legislation of Australia, shall be entitled to the concessional assessment of income set out in paragraph 2 of this Article for any period during which the rate of that person’s Australian benefit is proportionalised under the legislation of Australia.

4. Where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia and until the person becomes eligible under Australian domestic legislation the amount of that benefit shall be determined as follows:

(a) according to the legislation of Australia, but without taking into account in the computation of his or her income any Spanish benefit which that person is entitled to receive, and

(b) by deducting the amount of that Spanish benefit from the amount of the Australian benefit to which that person would otherwise be entitled.

5. Where a married person, or that person and his or her spouse are in receipt of a Spanish benefit or benefits, it shall be deemed, for the purposes of implementing paragraph 4 and the legislation of Australia, that each one of them receives one half of the amount of the benefit or the total of the two benefits as the case may be.

6. If a person is unable to receive an Australian benefit as a result of the provisions of paragraph 4, or because the person did not claim the said benefit, it shall be deemed that if that person’s spouse claims a benefit under the legislation of Australia, that the person receives that benefit.

7. The reference in paragraph 6 to payment of a benefit under the legislation of Australia to the spouse, means the payment of any benefit, pension or allowance payable under the *Social Security Act 1947* as amended from time to time and whether payable by virtue of this Agreement or otherwise.

PART III—PROVISIONS RELATING TO SPANISH BENEFITS

ARTICLE 10

Totalization for Spain

1. Where this Agreement applies and there is a Spanish creditable period that is:

(a) less than the period necessary to give a claimant entitlement to the benefit claimed under Spanish legislation; and

(b) equal to or greater than the minimum period mentioned in paragraph 3 for that benefit,

 then any period of residence in Australia by the contributor to whom that Spanish creditable period was credited shall be deemed to be a Spanish creditable period.

2. For the purposes of this Article, where a Spanish creditable period and period of residence in Australia coincide, the period of coincidence shall be taken into account once only as a Spanish creditable period.

3. The minimum Spanish creditable period to be taken into consideration for the purposes of paragraph 1 shall be one year. However, where the Spanish creditable period is shorter than one year and the period of residence in Australia is also shorter than one year, but with the addition of both periods an entitlement to a Spanish benefit is obtained, they shall both be taken into account.

4. For the purposes of this Article the upper age limit for a woman, set in the definition of a period of residence in Australia in the legislation of Australia shall be raised from 60 years to 65 years for the purposes of claiming an old age pension under the legislation of Spain.

ARTICLE 11

Sickness Benefits

For the granting of benefits in case of sickness of a worker the totalization of periods referred to in Article 10 shall be taken into account, if necessary, without the condition imposed by subparagraph 1(b) of Article 10.

ARTICLE 12

Old age, invalidity and survivors pensions

1. Entitlement by virtue of this Agreement to old age, invalidity or death and survivors benefit under the legislation of Spain shall be determined as follows:

(a) the Competent Institution shall determine, according to its own provisions, the amount of the benefit corresponding to the duration of the periods of insurance completed only under its legislation.

(b) The Competent Institution shall also examine the entitlement considering the provisions of Article 10. If, in application of it, entitlement to pension is obtained, the following rules shall apply for the calculation of the amount:

(i) the Competent Institution shall determine the theoretical pension to which the claimant would be entitled as if all the periods of insurance and/or residence totalized had been accomplished under its legislation;

(ii) the amount of the pension effectively due to the claimant, shall be that obtained after reducing the amount of the theoretical pension to a pro‑rata pension, according to the period of insurance completed exclusively under the legislation of Spain and all the periods of insurance and residence completed in the two Parties; and

(iii) in no case shall the sum of the Spanish creditable periods and the periods of residence in Australia be taken to exceed the maximum period established by the legislation of Spain in regard to the benefit in question.

2. Once the entitlement of the claimant has been established according to subparagraphs 1(a) and (b) the Competent Institution shall assign the most favourable benefit.

ARTICLE 13

Special Scheme Benefits

If the legislation of Spain provides that in the determination of entitlement to or the granting of certain benefits there is a requirement that the Spanish creditable periods have been completed in an activity subject to a Special Scheme or, as the case may be, in a specific activity or specific employment, periods of residence in Australia completed under the legislation of Australia shall be taken into account when they have been accomplished in an equivalent scheme or in the same activity or in the same employment.

ARTICLE 14

Determination of Regulating Base

When, for determining the Regulating Base for benefits, periods of residence in Australia must be taken into account, the Spanish Competent Institution shall determine that Regulating Base on the minimum contribution bases in force in Spain, during that period or fraction of period, for the workers of the same category of professional qualification as the person concerned last had according to Spanish legislation.

ARTICLE 15

Situacion de alta

An Australian resident or a person in receipt of an Australian benefit shall be deemed to be validly insured (situacion de alta o asimilada) for the purposes of entitlement to benefit under the legislation of Spain.

ARTICLE 16

Unemployment Benefits

1. For the granting of unemployment benefits the totalization of periods referred to in Article 10 shall, if necessary, be taken into account without the condition imposed by subparagraph 1(b) of that Article.

2. Notwithstanding the provisions of Article 20, unemployment benefits paid pursuant to paragraph 1 shall be paid during the periods established under the legislation of Spain and while the unemployed person resides in the territory of Spain.

ARTICLE 17

Equivalence of Events

The continuing entitlement to a Spanish benefit shall be subject to the legislation of Spain and events which occur in Australia relevant to that continuing entitlement will be considered as if they had occurred in Spain.

PART IV—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 18

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of either of the Parties in accordance with administrative arrangements made pursuant to Article 22 at any time after the Agreement enters into force.

2. The date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of that document with the Competent Institution of the first Party.

3. In relation to Australia, the reference in paragraph 2 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, the social security laws of Australia.

ARTICLE 19

Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:

(a) a period as an Australian resident and a Spanish creditable period; and

(b) any event or fact which is relevant to that entitlement,

 shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.

3. (a) Where a person receives or will receive a benefit from one Party and has received an overpayment of a benefit from the other Party, the Institution of the latter Party may request the Institution of the former Party to withhold the amount of the overpayment from the arrears of benefits payable by the former Party and transfer them to the Institution of the latter Party to recoup the amount of the overpayment.

 (b) The Institution receiving a request under subparagraph (a) shall take the action set out in the Administrative Arrangement, as provided for in Article 22, to recoup the amount of the overpayment and to transfer it to the other Institution.

 (c) The amount of the overpayment shall be a debt due by the person receiving it to the Party that paid it.

4. A reference in paragraph 3 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the *Social Security Act 1947* of Australia as amended from time to time, and in relation to Spain, means any pension, benefit, allowance or advance made by an Institution including overpayments.

ARTICLE 20

Payment of Benefits

1. The benefits payable by virtue of this Agreement and listed in this paragraph shall be payable within and outside the territories of both Parties:

(a) for Australia: ‑ age pensions,

 ‑ invalid pensions,

 ‑ wife’s pensions, and

 ‑ pensions payable to widows for persons who are Class B widows or Class A widows who were widowed in Australia.

(b) for Spain: ‑ invalidity,

 ‑ old age, and

 ‑ death and survivors.

2. The benefits payable by virtue of this Agreement or otherwise and listed in this paragraph shall be paid in Australia and Spain with no limitation by time:

(a) for Australia: ‑ carer’s pensions,

 and

 ‑ pensions payable to widows who are not included in subparagraph 1(a).

(b) for Spain: ‑ invalidity,

 ‑ old age, and

 ‑ death and

 survivors.

3. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.

4. A benefit payable by a party by virtue of this Agreement shall be paid by that Party, whether the beneficiary is in the territory of the other Party or outside the respective territories of both Parties, without deduction for government administrative fees and charges for processing and paying that benefit.

5. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia becoming again an Australian resident, and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.

ARTICLE 21

Exchange of Information and Mutual Assistance

1. The Competent Authorities shall:

(a) advise each other of laws that amend, supplement or replace the legislation of their respective Parties, promptly after the first‑mentioned laws are made;

(b) advise each other directly of internal action to implement this Agreement and any Arrangement adopted for its implementation; and

(c) advise each other of any technical problems encountered when applying the provisions of this Agreement or of any Arrangement made for its implementation.

2. The Institutions of both Parties shall:

(a) advise each other of any information necessary for the application of this Agreement or of the respective legislation of the Parties concerning all matters within their area of competence arising under this Agreement or under those laws;

(b) assist one another in relation to the determination of any benefit under this Agreement or the respective legislation within the limits of and according to their own laws; and

(c) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 22.

3. The assistance referred to in paragraphs 1 and 2 shall be provided free of charge, subject to any arrangement reached between the Competent Authorities and Institutions for the reimbursement of certain types of expenses.

4. Any information about a person which is transmitted in accordance with this Agreement to an Institution shall be protected in the same manner as information obtained under the legislation of that Party.

5. In no case shall the provisions of paragraphs 1, 2 and 4 be construed so as to impose on the Competent Authority or Institution of a Party the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party; or

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or the other Party.

6. In this Article the meaning of “legislation” is not confined by any restrictions imposed by Article 2.

7. In the application of this Agreement, the Competent Authority and the Institutions of a party may communicate with the other in the official language of that Party.

ARTICLE 22

Administrative Arrangements

The Competent Authorities of the Parties shall make whatever administrative arrangements are necessary in order to implement this Agreement.

ARTICLE 23

Review of Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise arrange, their meeting shall be held in the territory of the Party to which that request was made.

PART V—FINAL PROVISIONS

ARTICLE 24

Entry Into Force and Termination

1. This Agreement shall enter into force one month after an exchange of notes by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalized.

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating the intention of the other Party to terminate this Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who:

(a) at the date of termination, are in receipt of benefits; or

(b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits,

 by virtue of this Agreement.

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

DONE in 2 copies at CANBERRA this 10th day of FEBRUARY 1990 in the Spanish and English languages, each text being equally authoritative.

FOR AUSTRALIA: FOR SPAIN:

BRIAN HOWE JOSE LUIS PARDOS

[Signatures omitted]

# Schedule 6—Malta

Note: See section 5.

Agreement between AUSTRALIA and MALTA on Social Security

Australia and Malta,

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

Resolved to co‑ordinate their social security systems;

Have agreed as follows:

PART I—GENERAL PROVISIONS

ARTICLE 1

Interpretation

1. In this Agreement, unless the context otherwise requires:

 “applicable rate” means, in relation to Malta, the rate that would otherwise have been payable to a claimant had the number of totalised contributions been all paid or credited under the legislation of Malta;

 “benefit” means, in relation to a Party, a benefit for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that benefit, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

 “Competent Authority” means, in relation to Australia, the Secretary of the Department of Social Security and, in relation to Malta, the Director of Social Security;

 “Competent Institution” means, in relation to Australia the Competent Authority for Australia and in relation to Malta, the Competent Authority for Malta;

 “legislation” means, in relation to a Party, the laws specified in Article 2 in relation to that Party;

 “period of insurance” means, the period of contributions or any equivalent period which has been or can be used to acquire the right to a benefit under the legislation of Malta, but does not include any period deemed pursuant to Article 9 to be a period of insurance;

 “period of residence in Australia”, in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 7 to be a period in which that person was an Australian resident;

 “territory” means, in relation to Australia, Australia as defined in the legislation of Australia and in relation to Malta, Malta as defined in the Constitution of Malta; and

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

2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the legislation of either Party or, in the event of a conflict of meaning, by whichever of those laws is the more applicable to the circumstances of that person.

ARTICLE 2

Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:

(a) in relation to Australia: the *Social Security Act 1947* in so far as the Act provides for, applies to or affects:

(i) age pensions;

(ii) invalid pensions;

(iii) wives’ pensions; and

(iv) pensions payable to widows; and

(b) in relation to Malta: the *Social Security Act, 1987* as it provides for, applies to or affects:

(i) contributory pensions in respect of retirement;

(ii) contributory pensions in respect of invalidity;

(iii) contributory pensions in respect of widowhood; and

(iv) non‑contributory assistance and pensions.

2. Notwithstanding the provisions of paragraph 1 the legislation of either Party shall not include any laws made at any time for the purpose of giving effect to any reciprocal agreement on Social Security entered into by either Party.

3. This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries only if the two Parties so agree in a Protocol to this Agreement.

4. In respect of non‑contributory assistance and pensions payable under the legislation of Malta, a citizen of Australia shall have the same rights as a citizen of Malta.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

(a) is or has been an Australian resident; or

(b) is or has been an insured person under the legislation of Malta,

and, where applicable, to other persons in regard to the rights they derive from the person described above.

ARTICLE 4

Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

PART II—PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 5

Residence or Presence in Malta or a Third State

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not an Australian resident and in Australia on the date on which he or she lodges a claim for that benefit but he or she:

(a) is an Australian resident or residing in the territory of Malta or a third State with which Australia has concluded an agreement on social security that includes provision for co‑operation in the assessment and determination of claims for benefits; and

(b) is in Australia, or the territory of Malta or that third State,

 that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

2. Paragraph 1 shall not apply to a claimant for a wife’s pension who has never been an Australian resident.

ARTICLE 6

Spouse Related Australian Benefits

For the purposes of this Agreement, a person who receives from Australia an Australian benefit due to the fact that the spouse of that person receives, by virtue of this Agreement, another Australian benefit shall be deemed to receive that first‑mentioned benefit by virtue of this Agreement.

ARTICLE 7

Totalisation for Australia

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

(a) a period as an Australian resident that is less than the period required to qualify him or her, on that ground, under the legislation of Australia for a benefit; and

(b) a period of residence in Australia equal to or greater than the minimum period identified in accordance with paragraph 4 for that person,

 and has accumulated a period of insurance, then for the purposes of a claim for that Australian benefit, that period of insurance shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia, to be a period in which that person was an Australian resident.

2. For the purposes of paragraph 1, where a person:

(a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and

(b) has accumulated a period of insurance in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a),

 the total of the periods of insurance shall be deemed to be one continuous period.

3. For all purposes of this Article, where a period by a person as an Australian resident and a period of insurance coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

4. The minimum period of residence in Australia which a person must have accumulated before paragraph 1 applies shall be as follows:

(a) for the purposes of an Australian benefit that is payable to a person residing outside Australia, the minimum period required shall be one year, of which at least 6 months must be continuous; and

(b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum period shall be required.

5. For the purposes of a claim by a person for a pension payable to a widow, that person shall be deemed to have accumulated a period of insurance for any period for which her spouse accumulated a period of insurance but any period during which the person and her spouse both accumulated periods of insurance shall be taken into account once only.

6. Where a person receives in Malta a contributory pension in respect of retirement by virtue of this Agreement, Australia shall, for the purposes of this Article, regard the period during which that person receives that pension, up to the age of 65, as a period of insurance.

ARTICLE 8

Calculation of Australian Benefits

1. Subject to paragraph 2, where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who is outside Australia the rate of that benefit shall be determined according to the legislation of Australia but when assessing the income of that person for the purposes of calculating the rate of the Australian benefit only a proportion of any Maltese contributory pension in respect of retirement, invalidity or widowhood which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of residence in Australia (not exceeding 300) by the amount of that Maltese benefit and dividing that product by 300.

2. A person referred to in paragraph 1 shall only be entitled to receive the concessional assessment of income described in that paragraph for any period during which the rate of that person’s Australian benefit is proportionalised under the legislation of Australia.

3. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise to a person who is resident in the territory of Malta, Australia shall disregard, when assessing the income of that person any non‑contributory assistance and pension paid to that person by Malta.

4. Subject to the provisions of paragraph 5, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:

(a) calculating that person’s income according to the legislation of Australia but disregarding in that calculation the Maltese benefit received by that person;

(b) deducting the amount of the Maltese benefit received by that person from the maximum rate of that Australian benefit; and

(c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the legislation of Australia, using as the person’s income the amount calculated under subparagraph (a).

5. Where a married person is, or both that person and his or her spouse are, in receipt of a Maltese benefit or benefits, each of them shall be deemed, for the purpose of paragraph 4 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

6. If a person would receive an Australian benefit except for the operation of paragraph 4 or except for that person’s failure to claim the benefit, then for the purposes of a claim by that person’s spouse for a payment under the legislation of Australia that person shall be deemed to receive that benefit.

7. The reference in paragraph 6 to a payment under the legislation of Australia to the spouse of a person is a reference to a payment of any benefit, pension or allowance payable under the *Social Security Act 1947* as amended from time to time and whether payable by virtue of this Agreement or otherwise.

PART III—PROVISIONS RELATING TO MALTESE BENEFITS

ARTICLE 9

Totalisation for Malta

1. Where this Agreement applies and there is a period of insurance that is:

(a) less than the period necessary to give a claimant entitlement to the benefit claimed under the legislation of Malta; and

(b) equal to or greater than the minimum period mentioned in paragraph 3 for that benefit,

 then any period of residence in Australia by the contributor to whom that period of insurance was credited shall be deemed to be a period of insurance.

2. For the purposes of this Article, where a period of insurance and a period of residence in Australia coincide, the period of coincidence shall be taken into account once only as a period of insurance.

3. The minimum period of insurance to be taken into consideration for purposes of paragraph 1 shall be 52 paid contributions. However, subject to paragraph 5, where the period of insurance, not being less than 52 paid contributions, does not entitle a person to a Maltese benefit, but the period of insurance in Malta and the period of residence in Australia together entitle such person to a Maltese benefit, they shall be taken into account.

4. The provisions of this Article shall not apply in the case of a Two‑Thirds Pension (Retirement) or a Survivor’s Pension (Widowhood) unless:

(a) in the case of a Two‑Thirds Pension, the person concerned would have paid at least 156 contributions under the legislation of Malta after the 22nd January, 1979; and

(b) in the case of a Survivor’s Pension, the husband of the widow concerned would have paid at least 156 contributions under the legislation of Malta after the 22nd January, 1979.

5. For the purposes of a claim by a person for a contributory widow’s pension the contributor, provided the contributor meets the requirements of subparagraph 1(b), shall be deemed to have also accumulated a period of residence in Australia for any period for which the claimant accumulated a period of residence in Australia but any period during which the contributor and the claimant both accumulated periods of residence in Australia shall be taken into account once only.

ARTICLE 10

Calculation of Maltese Benefits

1. Where Malta pays non‑contributory assistance or pension by virtue of this Agreement, the rate of that benefit shall be determined according to the legislation of Malta.

2. Where a contributory benefit is payable by Malta to a claimant by virtue of this Agreement the rate of that benefit shall be calculated as follows:

(a) in the case of a pension in respect of retirement other than a Two‑Thirds Pension, by multiplying the applicable rate of that pension attributable to the claimant by the number of reckonable contributions (not exceeding 2400) on which that pension would have otherwise been calculated under the legislation of Malta and dividing the product by the number of totalised contributions aggregated under Article 9 (not exceeding 2400);

(b) in the case of a Two‑Thirds Pension, the rate of that pension shall be calculated according to the following formula:

**P.I. x 2 x ( TI + T2 ) x ( C1 + C2 )**

 **( Y 10) (T1 T2)**

 600

but that pension shall not be payable if the formula

**( TI + T2 )**

**( Y 10 )**

2

gives a result that is less than 15

where:

**P.I.** = the claimant’s pensionable income or re‑assessed pensionable income (as the case may be) according to the legislation of Malta;

**C1** = the number of reckonable contributions (not exceeding 1000) during any period prior to the last 10 calendar years immediately before retirement;

**C2** = the number of reckonable contributions (not exceeding 500) within the last 10 calendar years immediately before retirement;

**T1** = the number of totalised contributions (not exceeding 1000) aggregated under Article 9 during any period prior to the last 10 calendar years immediately before retirement;

**T2** = the number of totalised contributions (not exceeding 500) aggregated under Article 9 within the last 10 calendar years immediately before retirement; and

**Y** = the number of reckonable years (not exceeding 20) prior to the last 10 calendar years immediately before retirement.

(c) in the case of a pension in respect of invalidity, by multiplying the applicable rate of that pension attributable to the claimant by the number of reckonable contributions (not exceeding 2400) on which that pension would have otherwise been calculated under the legislation of Malta and dividing the product by the number of reckonable totalised contributions aggregated under Article 9 (not exceeding 2400);

(d) in the case of a pension in respect of widowhood other than a Survivor’s Pension by multiplying the applicable rate of that pension attributable to the claimant by the number of reckonable contributions (not exceeding 2400) on which that pension would have otherwise been calculated under the legislation of Malta relating to her late husband and dividing the product by the number of totalised contributions aggregated under Article 9 (not exceeding 2400); and

(e) in the case of a Survivor’s Pension at 5/6 of the rate of pension arrived at in accordance with the provisions of paragraph 2(b).

3. Any statutory pension additional rates that are applicable to certain benefits covered by this Agreement that are payable under the legislation of Malta, payment of which is also linked to a yearly contribution average, shall be calculated in the same manner as that indicated in paragraph 2, as the case may require.

4. Where Malta pays a Maltese benefit to a person only by virtue of the Agreement it shall deduct any statutory pension deductions that would be deducted if those pensions were paid solely under the legislation of Malta provided that any service pension for war service or wife’s service pension paid to that person by Australia as defined in and payable under its *Veterans’ Entitlement Act 1986* shall not for the purposes of this Agreement or otherwise under the legislation of Malta be treated as a service pension as defined in the legislation of Malta.

5. Any pension arrived at in accordance with paragraphs 2, 3 and 4 shall be rounded up to the nearest whole cent.

6. In this Article ‘reckonable contribution’ and ‘reckonable year’ shall have the meanings given to them in the legislation of Malta.

PART IV—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 11

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of either of the Parties in accordance with an Administrative Arrangement made pursuant to Article 15 at any time after the Agreement enters into force.

2. The date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of that document with the Competent Institution of the first Party.

3. In relation to Australia, the reference in paragraph 2 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, the *Social Security Act 1947* of Australia as amended from time to time.

4. In relation to Malta, the reference in paragraph 2 to an appeal document is a reference to a document concerning an appeal that may be made to the Umpire for the purposes of the *Social Security Act, 1987* of Malta as amended from time to time.

ARTICLE 12

Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:

(a) a period as an Australian resident and a period of insurance; and

(b) any event or fact which is relevant to that entitlement,

 shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.

3. Where:

(a) a claim is made for a benefit payable by one of the Parties by virtue of this Agreement; and

(b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to a benefit that is payable by the other Party and that, if paid, would affect the amount of the first‑mentioned benefit, that first‑mentioned benefit shall not be paid until a claim is duly lodged for payment of the second‑mentioned benefit and the first‑mentioned benefit shall not continue to be paid if the claim for the second‑mentioned benefit is not actively pursued.

4. Where:

(a) a benefit is paid or payable by a Party to a person in respect of a past period;

(b) for all or part of that period, the other Party has paid to that person a benefit under its legislation; and

(c) the amount of the benefit paid by that other Party would have been reduced had the benefit paid or payable by the first Party been paid during that period;

 then

(d) the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid throughout that past period shall be a debt due by that person to the other Party; and

(e) the other Party may determine that the amount, or any part, of that debt may be deducted from future payments of a benefit payable by that Party to that person.

5. Where the first Party has not yet paid the arrears of benefit described in subparagraph 4(a) to the person:

(a) that Party shall, at the request of the other Party, pay the amount of the debt described in subparagraph 4(d) to the other Party and shall pay any excess to the person; and

(b) any shortfall in those arrears may be recovered by the other Party under subparagraph 4(e).

6. The Competent Institution receiving a request under paragraph 5 shall take the action set out in an Administrative Arrangement made pursuant to Article 15, to recoup the amount of the overpayment and to transfer it to the other Competent Institution.

7. A reference in paragraphs 3, 4 and 5 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the *Social Security Act 1947* of Australia as amended from time to time, and in relation to Malta, means any pension, benefit, allowance or assistance that is payable under the *Social Security Act, 1987* of Malta.

ARTICLE 13

Payment of Benefits

1. The benefits payable by virtue of this Agreement and listed in this paragraph shall be payable within and outside the territories of both Parties:

(a) for Australia:

(i) age pensions;

(ii) invalid pensions;

(iii) wives’ pensions;

(iv) pensions payable to widows who were widowed while both they and their husbands were Australian residents;

(v) class B widows’ pensions; and

(b) for Malta: contributory pensions in respect of retirement, invalidity and widowhood.

2. A pension payable to a widow whether payable by virtue of this Agreement or otherwise, shall be paid by Australia in the territories of both Parties with no limitation by time.

3. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.

4. A party that imposes restrictions described in paragraph 3 shall inform the other Party of those restrictions within one calendar month of their imposition and shall adopt the measures described in paragraph 3 within 3 months of the imposition of those restrictions. If the other Party is not so informed or if the necessary measures are not adopted within the set time the other Party may treat such a failure as a material breach of the Agreement for the purposes of Article 60 of the Vienna Convention on the Law of Treaties.

5. A benefit payable by a Party by virtue of this Agreement to a person outside the territory of that Party shall be paid without deduction for government administrative fees and charges for processing and paying that benefit.

6. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia becoming again an Australian resident, and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.

ARTICLE 14

Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement:

(a) shall communicate to each other any information necessary for the application of this Agreement or of the Social Security Laws of the Parties;

(b) shall lend their good offices and furnish assistance to one another with regard to the determination or payment of any benefit under this Agreement or the legislation to which this Agreement applies as if the matter involved the application of their own legislation;

(c) shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation in so far as these changes affect the application of this Agreement; and

(d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in an Administrative Arrangement made pursuant to Article 15.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangement made pursuant to Article 15.

3. Unless disclosure is required under the laws of a Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or a Competent Institution of that Party by a Competent Authority or a Competent Institution of the other Party is confidential and shall be used only for purposes of implementing this Agreement and the legislation to which this Agreement applies.

4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the Competent Authority or Competent Institution of a Party the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that Party or the other Party; or

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that Party or the other Party.

5. In the application of this Agreement, the Competent Authority and the Competent Institution of a Party may communicate with the other in the official language of that Party.

ARTICLE 15

Administrative Arrangement

The Competent Authorities of the Parties shall make whatever Administrative Arrangement is necessary from time to time in order to implement this Agreement.

ARTICLE 16

Resolution of Difficulties

1. The Competent Authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.

2. The Parties shall consult promptly at the request of either concerning matters which have not been resolved by the Competent Authorities in accordance with paragraph 1.

3. Any dispute between the Parties concerning the interpretation of this Agreement which has not been resolved or settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration.

4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators so appointed shall appoint a third who shall act as president; provided that if the two arbitrators fail to agree, the President of the International Court of Justice shall be requested to appoint the president.

5. The arbitrators shall determine their own procedures.

6. The decision of the arbitrators shall be final and binding.

7. Unless the Parties otherwise agree, the place of arbitration shall be in the territory of the Party which did not raise the matter in dispute.

ARTICLE 17

Review of Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise arrange, their meeting shall be held in the territory of the Party to which that request was made.

PART V—FINAL PROVISIONS

ARTICLE 18

Entry into Force and Termination

1. This Agreement shall enter into force one month after an exchange of notes by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalized.

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating the intention of the other Party to terminate this Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who:

(a) at the date of termination, are in receipt of benefits; or

(b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits,

 by virtue of this Agreement.

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

DONE in duplicate at Canberra this fifteenth day of August 1990.

FOR AUSTRALIA: FOR MALTA:

Graham Richardson Louis Galea

[Signatures omitted]

# Schedule 7—Netherlands

Note: See section 5.

AGREEMENT between AUSTRALIA and THE KINGDOM OF THE NETHERLANDS ON SOCIAL SECURITY

The Government of Australia and the Government of The Kingdom of The Netherlands,

Wishing to strengthen the existing friendly relations between their two countries, and

Resolved to co‑operate in the field of social security;

Have agreed as follows:

PART I—GENERAL PROVISIONS

Article 1

Definitions

1. In this Agreement, unless the context otherwise requires:

 “benefit” means in relation to a Party, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement for which a beneficiary is qualified;

 “Competent Authority” means, in relation to Australia: the Secretary to the Department of Social Security, and, in relation to The Netherlands: the Minister for Social Affairs and Employment;

 “Competent Institution” means, in relation to Australia: the Competent Authority for Australia, and in relation to The Netherlands: the Insurance Institution which is charged with the implementation of the legislation of The Netherlands specified in Article 2 and which is competent under that legislation;

 “legislation” means, in relation to Australia, the laws specified in Article 2 in relation to Australia; and, in relation to The Netherlands, the laws, ordinances and administrative regulations relating to the systems and branches of social security specified in Article 2 in relation to The Netherlands;

 “period of insurance” means a period defined as such in the legislation of The Netherlands;

 “period of residence in Australia”, in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 9 to be a period in which that person was an Australian resident; and

 “territory” means, in relation to Australia, The Commonwealth of Australia, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island, and, in relation to The Netherlands, the territory of the Kingdom in Europe.

2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the legislation of either Party.

Article 2

Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, consolidate, supplement or replace them:

(a) in relation to Australia: the Social Security Act 1947, in so far as the Act provides for, applies to or affects the following benefits:

(i) age pensions;

(ii) wives’ pensions for women who are the wives of persons receiving age pension;

(b) in relation to The Netherlands, its legislation on:

(i) general old age insurance;

 and for the application of Article 6 also its legislation on:

(ii) sickness insurance;

(iii) unemployment insurance;

(iv) children’s allowances;

(v) invalidity insurance;

(vi) general survivor’s insurance.

2. Notwithstanding the provisions of paragraph 1 the legislation of Australia shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security entered into by either Party.

3. This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries or to new branches or systems of social security only if the two Parties so agree in a Protocol to this Agreement.

4. This Agreement shall not apply to social and medical assistance schemes, to special schemes for civil servants or persons treated as such, or to benefit schemes for victims of war or its consequences.

Article 3

Personal Scope

Subject to other articles of this Agreement, it shall apply to any person who:

(a) is or has been an Australian resident, or

(b) is or has been subject to the legislation of The Netherlands,

and, where applicable, to other persons in regard to the rights they derive from a person described above.

Article 4

Equality of Treatment

1. Subject to the domestic laws of a Party the citizens of each of the Parties shall be treated equally in the application of the social security laws of Australia and of The Netherlands.

2. Subject to this Agreement and unless otherwise provided, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise by virtue of this Agreement.

Article 5

Payment of benefits abroad

1. Except where otherwise provided in this Agreement and subject to the legislation of the Parties, benefits may not be reduced, modified, suspended or withdrawn on account of the recipient residing in the territory of the other Party.

2. Where qualification for Australian wives’ pensions for women, who are the wives of persons receiving age pensions, are subject to limitations as to time, then reference to Australia in those limitations shall be read also as reference to the territory of The Netherlands.

Article 6

Secondment

1. Where a person, who is subject to the legislation of The Netherlands, in the service of an employer having its place of business in the territory of The Netherlands is sent from that territory by that employer to work in the territory of Australia for a period not expected to exceed 5 years, the person may remain subject to the legislation of The Netherlands as if he were employed in the territory of The Netherlands.

2. If the duration of the work is expected to extend beyond the afore‑mentioned duration a person who is subject to the legislation of The Netherlands in the service of an employer having his place of business in the territory of The Netherlands, is sent from that territory by that employer to work in the territory of Australia, the person may, if justified by special reasons, remain subject to the legislation of The Netherlands as if he were employed in the territory of the Netherlands.

3. If the actual duration of work of the person described in paragraph 1 exceeds the expected period of work owing to unforeseeable circumstances that person may remain subject to the legislation of The Netherlands as if he were employed in the territory of The Netherlands.

4. For the purposes of the Netherlands’ legislation, a person who is subject to the Netherlands’ legislation in accordance with the provisions of this article shall be considered to be resident in the territory of The Netherlands.

5. According to the provisions of this article the Netherlands’ legislation shall be applicable if the employer or employee has applied for a certificate of secondment within three months after the first day of secondment or as expressed in paragraph 3 before the end of the expected period of secondment and this certificate has been issued to the person concerned.

PART II—PROVISIONS RELATING TO AUSTRALIAN BENEFITS

Article 7

Residence or Presence in The Netherlands or a Third State

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not an Australian resident and in Australia on the date on which he or she lodges a claim for that benefit but he or she:

(a) is an Australian resident or residing in The Netherlands or a third State with which Australia has concluded an agreement on social security that includes provision for co‑operation in the assessment and determination of claims for benefits, and

(b) is in Australia or The Netherlands or that third State,

 that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

2. Paragraph 1 shall not apply to a claimant for a wife’s pension who has never been an Australian resident.

Article 8

Spouse‑related Australian Benefits

1. For the purposes of this Agreement, a person who receives a wife’s pension under the Social Security Act 1947 as amended from time to time due to the fact that the spouse of that person receives by virtue of this Agreement an Australian benefit, shall be deemed to receive that wife’s pension by virtue of this Agreement.

2. For the purposes of this Agreement, a person in Australia who receives a carer’s pension under the Social Security Act 1947 as amended from time to time because that person is caring for someone who receives an Australian benefit by virtue of this Agreement, shall be deemed to receive that carer’s pension by virtue of this Agreement.

Article 9

Totalisation for Australia

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

(a) a period as an Australian resident that is less than the period required to qualify him or her, on that ground, under the legislation of Australia for that Australian benefit; and

(b) a period of residence in Australia equal to or greater than the period identified in paragraph 4 for that person,

 and has accumulated a period of insurance then, for the purposes of a claim for that Australian benefit, that period of insurance shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia, to be a period in which that person was an Australian resident.

2. For the purposes of paragraph 1, where a person:

(a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit, and

(b) has accumulated a period of insurance in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a),

 the total of the periods of insurance shall be deemed to be one continuous period.

3. For all purposes of this Article, where a period by a person as an Australian resident and a period of insurance accumulated by that person coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

4. The minimum period of residence in Australia to be taken into account for the purposes of paragraph 1 shall be as follows:

(a) for the purposes of an Australian benefit that is payable to a person residing outside Australia, the minimum period required shall be one year, of which at least six months must be continuous, and

(b) for the purposes of an Australian benefit that is payable to an Australian resident there shall be no minimum period of residence in Australia.

Article 10

Calculation of Australian Benefits

1. Subject to paragraph 2, where a person who is outside Australia is qualified for an Australian benefit only by virtue of this Agreement, the rate of that benefit shall be determined according to the legislation of Australia.

2. When assessing the income of a person for the purposes of calculating the rate of a benefit pursuant to paragraph 1:

(a) any payment according to the Algemene Bijstandswet, to that person under the legislation of The Netherlands shall be disregarded, and

(b) only the proportion of any other Netherlands’ benefit described as follows which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of residence in Australia (not exceeding 300) by the amount of that Netherlands’ benefit and dividing that product by 300.

 The calculation described in paragraph 2(b) may be expressed as

**A = Q [R ‑ (NP x Q/300 + I ‑ F)]**

 300 2

 where:

**A** = rate of Australian benefit payable;

**Q** = number of months of the period of residence in Australia of the person or 300 whichever is the lower;

**R** = maximum rate of Australian benefit;

**NP** = Netherlands’ old age benefit excluding AOW toeslag;

**I** = income within the meaning of Australian legislation excluding NP; and

**F** = free area under the Australian income test.

3. A person who receives an Australian benefit in the territory of The Netherlands under the legislation of Australia shall be entitled to receive the concessional assessment of income set out in paragraph 2(a).

4. A person who receives a proportionalised Australian benefit in the territory of The Netherlands under the legislation of Australia shall be entitled to receive the concessional assessment of income set out in paragraph 2.

5. Subject to the provisions of paragraph 6, where a person who is in Australia is qualified to receive an Australian benefit only by virtue of this Agreement, the rate of that benefit shall be determined by:

(a) calculating that person’s income according to the legislation of Australia but disregarding in that calculation the Netherlands’ benefit received by that person;

(b) deducting the amount of the Netherlands’ benefit received by that person from the maximum rate of that Australian benefit; and

(c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the legislation of Australia, using as the person’s income the amount calculated under subparagraph (a).

6. Where a married person is, or both that person and his or her spouse are, in receipt of a Netherlands’ benefit or benefits, each of them shall be deemed, for the purpose of paragraph 5 and for the *Social Security Act 1947* as amended from time to time, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

7. If a person would receive an Australian benefit except for the operation of paragraph 5 or except for that person’s failure to claim the benefit, then for the purposes of a claim by that person’s spouse for a payment under the legislation of Australia that person shall be deemed to receive that benefit.

8. The reference in paragraph 7 to a payment under the legislation of Australia to the spouse of a person is a reference to a payment of any benefit, pension or allowance under the *Social Security Act 1947* as amended from time to time whether by virtue of this Agreement or otherwise.

PART III—PROVISIONS RELATING TO THE NETHERLANDS BENEFITS

Article 11

Benefits under the General Old Age Pensions Act

1. The Netherlands’ Competent Institution shall determine the old age pension directly and exclusively on the basis of periods of insurance completed under the Netherlands’ General Old Age Pensions Act.

2. Subject to paragraph 3, periods before January 1, 1957 during which a national of one Party resided in the territory of The Netherlands after reaching the age of fifteen or during which, while residing in another country the person was gainfully employed in The Netherlands, shall also be considered as periods of insurance if the person does not satisfy the condition of the Netherlands’ legislation permitting such periods to be treated for that person as periods of insurance.

3. The periods referred to in paragraph 2 shall be taken into consideration in the calculation of the old age pension only if the person concerned has been insured under the Netherlands’ General Old Age Pensions Act and has resided for at least six years in the territory of one or both Parties after reaching the age of fifty‑nine and only while the person is residing in the territory of either Party. However, the periods before January 1, 1957 shall not be taken into consideration if they coincide with periods taken into consideration for the calculation of an old age pension under the legislation of a country other than The Netherlands.

PART IV—COMMON PROVISIONS

Article 12

Common Provisions for the Calculation of Benefits

1. For the purposes of calculating Australian benefits under paragraph 2 of Article 10, the AOW‑toeslag shall not be taken into account if the beneficiary resides in the territory of The Netherlands.

2. For the purposes of calculating the AOW‑toeslag under Article 11, Australian benefits for the spouse of the beneficiary shall not be taken into account if the beneficiary resides in the territory of Australia.

PART V—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 13

Lodgement of Documents

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Party which should for the purposes of that legislation, have been presented within a prescribed period to a Competent Authority, Competent Institution or Tribunal of that Party, but which is presented within the same period to a Competent Authority, Competent Institution or Tribunal of the other Party, shall be treated as if it had been presented to the Competent Authority, Competent Institution or Tribunal of the first Party. The date on which such a claim, notice or appeal was submitted to that Competent Authority, Competent Institution or Tribunal of the first Party shall be considered only for the purposes of assessing entitlement to benefit as the date of its submission to that Competent Authority, Competent Institution or Tribunal of the other Party.

2. A claim for a benefit under the legislation of one Party shall be deemed to be a claim for the corresponding benefit under the legislation of the other Party, provided that the applicant:

(a) requests that it be considered an application under the legislation of the other Party, or

(b) provides information at the time of application indicating that periods of residence or periods of insurance have been completed under the legislation of the other Party and the claim is received by the Competent Institution of the other Party within six months from the date of lodgement with the first Party.

3. In any case to which paragraph 1 or 2 applies, the Competent Authority, Competent Institution or Tribunal to which the claim, notice or appeal has been submitted shall transmit it without delay to the Competent Authority, Competent Institution or Tribunal of the other Party.

4. In relation to Australia, the reference in paragraph 1 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by the social security laws of Australia.

Article 14

Recovery of Overpayments

1. Where:

(a) a benefit under this Agreement is claimed from, or is being paid by, one of the Parties; and

(b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to a benefit from the other Party and that, if paid, would affect the amount of that first‑mentioned benefit

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

2. For the purposes of the *Social Security Act 1947*, where:

(a) a benefit is paid or payable by a Party to a person in respect of a past period and that past period occurred after the entry into force of the Agreement;

(b) for all or part of that period, the other Party has paid to that person a benefit under its legislation; and

(c) the amount of the benefit paid by that other Party would have been reduced had the benefit referred to in subparagraph (a) been paid during that past period,

 then the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid on a periodical basis throughout the past period shall, for the purposes of this Article, be referred to as an “overpayment”.

3. A Competent Institution which has made an overpayment of a benefit to a beneficiary may request the other Competent Institution which is required to pay a corresponding benefit to that beneficiary to deduct the amount of the overpayment from any arrears of that corresponding benefit which the latter Competent Institution pays to that beneficiary. The latter Competent Institution shall if so requested deduct the amount of the overpayment from those arrears and transfer it to the former Competent Institution. Where the whole or part of any overpayment cannot be deducted from any arrears the provisions of paragraph 4 shall apply.

4. Where a Competent Institution of a Party is unable to recover pursuant to paragraph 3 all the amount of an overpayment it has made, it may, within the conditions and limits laid down by the legislation which it applies, request the Competent Institution of the other Party to deduct the unrecovered amount of the overpayment from any pension, benefit or allowance which the latter Competent Institution pays to the beneficiary. The latter Competent Institution shall make the deductions under the conditions and within the limits set out in the legislation which it applies as if it had made the overpayment and shall transfer the amounts deducted to the former Competent Institution.

5. The amount of any overpayment shall be a debt due by the person who received it to the Party that paid it.

6. A Party may determine that the amount, or any part, of the debt owing to it under paragraph 5 may be deducted from future payments of any pension, benefit or allowance payable at any time by that Party to the person owing the debt.

7. The Competent Institution receiving a request under paragraph 3 or 4 shall take the action agreed upon between the liaison agencies to recoup the amount of the overpayment and to transfer it to the other Competent Institution.

Article 15

Payments of Benefits

1. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement or to payment of social security contributions. Those measures shall operate retrospectively to the time the restrictions were imposed.

2. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party, whether the beneficiary is in the territory of the other Party or outside the respective territories of both Parties, without deduction for government administrative fees and charges for processing and paying that benefit.

3. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia becoming again an Australian resident, and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.

4. Any exemption granted in the territory of one of the Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to authorities and insurance institutions in the same territory, shall also apply to certificates and documents which, for the purposes of this Agreement, have to be submitted to authorities and insurance institutions in the territory of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic or consular authorities.

Article 16

Exchange of Information and Mutual Assistance

1. The Competent Authorities and Institutions responsible for the application of this Agreement shall:

(a) to the extent permitted by the legislation which they administer, communicate to each other any information necessary for the application of this Agreement;

(b) lend their good offices and furnish assistance to one another (including the communication to each other of any information necessary) with regard to the determination or payment of any benefit under this Agreement or under the legislation to which this Agreement applies as if the matter involved the application of their own legislation;

(c) communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation insofar as these changes affect the application of this Agreement;

(d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 17.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the Competent Authorities and Competent Institutions for the reimbursement of certain types of expenses.

3. Unless disclosure is required under the laws of a Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or a Competent Institution of that Party by a Competent Authority or a Competent Institution of the other Party is confidential and shall be used only for purposes of implementing this Agreement and the legislation to which this Agreement applies.

4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the Competent Authority or Competent Institution of a Party the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party, or

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or the other Party.

5. In the application of this Agreement, the Competent Authority and the Competent Institutions of a Party may communicate with the other in the official language of that Party.

Article 17

Administrative Arrangement

1. The Competent Authorities of the Parties shall establish, by means of an Administrative Arrangement, the measures necessary for the implementation of this Agreement.

2. Liaison agencies shall be designated to facilitate the implementation of this Agreement.

Article 18

Review of the Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise arrange, their meeting shall be held in the territory of the Party to which that request was made.

PART VI—TRANSITIONAL AND FINAL PROVISIONS

Article 19

Commencement of Benefits

1. The commencement date for payment of a benefit under this Agreement shall be determined in accordance with the legislation of the Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.

2. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:

(a) a period as an Australian resident and a period of insurance, and

(b) any event or fact which is relevant to that entitlement,

 shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.

3. No provision of this Agreement shall confer any right to receive payment of a benefit for a period before the date of entry into force of the Agreement.

4. Subject to paragraph 3, a person may be qualified to receive a benefit, other than a lump sum payment, under this Agreement in respect of events which happened before the date of entry into force of this Agreement.

Article 20

Entry Into Force and Termination

1. Both Parties shall notify each other in writing of the completion of their respective statutory and constitutional procedures required for entry into force of this Agreement. This Agreement shall enter into force on the first day of the third month following the date of the last notification.

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel notice of termination of this Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who:

(a) at the date of termination, are in receipt of benefits, or

(b) prior to the expiry of the period referred to in that paragraph, have lodged claims for and would be entitled to receive benefits,

 by virtue of this Agreement.

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

DONE in duplicate at The Hague this 4th day of January 1991, in the English language.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF

AUSTRALIA THE KINGDOM OF THE

 NETHERLANDS

GRAHAM RICHARDSON ELSKE TER VELD

[Signatures omitted]

# Schedule 8—Ireland

Note: See section 5.

AGREEMENT between AUSTRALIA and IRELAND ON SOCIAL SECURITY

Australia and Ireland,

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

Resolved to coordinate their social security systems,

Have agreed as follows:

PART I—GENERAL PROVISIONS

ARTICLE 1

Definitions

1. In this Agreement, unless the context otherwise requires:

(a) “benefit” means, in relation to a Party, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable in addition to that benefit, pension or allowance to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

(b) “Competent Authority” means, in relation to Australia:

 the Secretary to the Department of Social Security;

 and in relation to Ireland:

 the Minister for Social Welfare;

(c) “Competent Institution” means, in relation to Australia:

 the Department of Social Security;

 and in relation to Ireland:

 the Department of Social Welfare;

(d) “legislation” means, in relation to Australia:

 the laws specified in subparagraph 1(a) of Article 2;

 and in relation to Ireland:

 the laws specified in subparagraph 1(b) of Article 2;

(e) “period of residence in Australia”, in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 8 to be a period in which that person was an Australian resident;

(f) “Irish period of insurance” means, a period in respect of which qualifying contributions have been paid or a period in respect of which contributions have been treated as paid or credited and which has been or can be used to acquire the right to benefit under the legislation of Ireland, but does not include any period deemed pursuant to Article 10 to be an Irish period of insurance;

(g) “territory” means, in relation to Australia:

 Australia as defined in the legislation of Australia;

 and in relation to Ireland:

 that part of the island of Ireland which is at present under the jurisdiction of the Government of Ireland;

(h) “widow” means, in relation to Australia, a de jure widow but does not include a woman who is the de facto spouse of a man.

2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the legislation of either Party or, in the event of a conflict of meaning, by whichever of those laws is the more applicable to the circumstances of that person.

ARTICLE 2

Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement, consolidate or replace them:

(a) in relation to Australia: the *Social Security Act 1947* in so far as the Act provides for, applies to or affects the following benefits:

(i) age pensions;

(ii) invalid pensions;

(iii) pensions payable to widows;

(iv) wives’ pensions; and

(v) widowed person’s allowances;

(b) in relation to Ireland: the *Social Welfare Acts 1981 to 1991* and the regulations made thereunder to the extent that they provide for and apply to:

(i) old age (contributory) pensions;

(ii) retirement pensions;

(iii) widow’s (contributory) pensions;

(iv) invalidity pensions;

(v) orphan’s (contributory) allowances;

(vi) death grants; and

(vii) the liability for the payment of employment and self‑employment contributions.

2. Notwithstanding the provisions of paragraph 1, the legislation of Australia shall not include any laws made at any time for the purpose of giving effect to any agreement on social security.

3. This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries only if the two Parties so agree in a formal amendment to this Agreement.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

(a) is or has been an Australian resident; or

(b) is or has been subject to the legislation of Ireland,

and, where applicable, to other persons in regard to the rights they derive from the person described above.

ARTICLE 4

Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

ARTICLE 5

Detached Workers

1. (a) Where a person, who is insurably employed under the legislation of Ireland, is sent by his or her employer, whose principal place of business is in the territory of Ireland, to the territory of Australia to perform work there on the employer’s behalf which is of a temporary nature, the legislation of Ireland concerning liability for the payment of employment contributions shall apply during the first 24 months of the employment in the territory of Australia.

 (b) However, if the time taken to complete the work in the territory of Australia exceeds 24 months the Competent Authority of Ireland may, at the request of the employer of the person concerned, extend the period in respect of which the legislation of Ireland shall apply.

2. (a) The Competent Authority of Ireland may grant exemption from liability to pay employment contributions which would otherwise be payable under the legislation of Ireland, for a period not exceeding 24 months, in respect of employment in the territory of Ireland of an Australian resident, where the Competent Authority of Ireland is satisfied that the employment is of a temporary nature.

 (b) If, however, the time taken to complete the work in the territory of Ireland exceeds 24 months, the Competent Authority of Ireland may extend the period in respect of which the said exemption shall apply.

PART II—PROVISIONS RELATING TO BENEFITS AUSTRALIAN BENEFITS

ARTICLE 6

Residence or Presence in the Territory of Ireland or a Third State

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not an Australian resident and in Australia on the date on which he or she lodges a claim for that benefit but he or she:

(a) is an Australian resident or residing in the territory of Ireland or a third State with which Australia has concluded an agreement on social security that includes a provision for co‑operation in the assessment and determination of claims for benefits; and

(b) is in Australia, or the territory of Ireland or that third State,

 that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

2. Paragraph 1 shall not apply to a claimant for a wife’s pension who has never been an Australian resident.

ARTICLE 7

Spouse Related Australian Benefits

For the purposes of Article 9 only, a person who receives from Australia an Australian benefit, pension or allowance under the social security laws of Australia due to the fact that the spouse of that person receives, by virtue of this Agreement, an Australian benefit shall be deemed to be receiving that benefit, pension or allowance as if it were an Australian benefit received by virtue of this Agreement.

ARTICLE 8

Totalisation for Australia

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

(a) a period as an Australian resident that is less than the period required to qualify him or her, on that ground, under the legislation of Australia for a benefit; and

(b) a period of residence in Australia equal to or greater than the period identified in paragraph 4 for that person

 and has accumulated an Irish period of insurance, then for the purposes of a claim for that Australian benefit, that Irish period of insurance shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia, to be a period in which that person was an Australian resident.

2. For the purposes of paragraph 1, where a person:

(a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and

(b) has accumulated an Irish period of insurance in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a),

 the total of the Irish periods of insurance shall be deemed to be one continuous period.

3. For all the purposes of this Article, where a period by a person as an Australian resident and an Irish period of insurance coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

4. The period of residence in Australia to be taken into account for the purposes of subparagraph 1(b) shall be as follows:

(a) for the purposes of an Australian benefit that is payable to a person residing outside Australia, the minimum period required shall be 12 months, of which at least 6 months must be continuous; and

(b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum period shall be required.

5. For the purpose of a claim by a person for a pension payable to a widow, that person shall be deemed to have accumulated an Irish period of insurance for any period for which her spouse accumulated an Irish period of insurance but any period during which the person and her spouse both accumulated those periods of insurance shall be taken into account once only.

6. For the purpose of converting Irish periods of insurance into periods as an Australian resident in accordance with this Article, one week of an Irish period of insurance shall be deemed to be a period of a week as an Australian resident.

ARTICLE 9

Calculation of Australian Benefits

1. Subject to paragraph 2, where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside the territory of Australia, the rate of that benefit shall be determined according to the legislation of Australia but when assessing the income of that person for the purposes of calculating the rate of the Australian benefit only a proportion of any Irish benefit which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of residence in Australia (not exceeding 300) by the amount of that Irish benefit and dividing that product by 300.

2. A person referred to in paragraph 1 shall only be entitled to receive the concessional assessment of income described in that paragraph for any period during which the rate of that person’s Australian benefit is proportionalised under the legislation of Australia.

3. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise to a person who is resident in the territory of Ireland, Australia shall disregard, when assessing the income of that person, any of the Irish payments listed hereunder:

(i) unemployment assistance;

(ii) old age pension;

(iii) blind pension;

(iv) widow’s (non‑contributory) pension;

(v) orphan’s (non‑contributory) pension;

(vi) deserted wife’s allowance;

(vii) prisoners’ wife’s allowance;

(viii) lone parent’s allowance;

(ix) single woman’s allowance

(x) supplementary welfare allowance;

(xi) child benefit;

(xii) rent allowance;

(xiii) a maintenance allowance under section 69 of the *Health Act 1979*;

(xiv) any allowance, dependant’s allowance, disability pension or wound pension under the *Army Pensions Act 1923 to 1980*;

 and any other payments of a similar nature, as mutually determined from time to time in letters exchanged between the Ministers respectively administering the legislation of Australia and Ireland, paid to that person by Ireland.

4. Subject to the provisions of paragraph 5, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:

(a) calculating that person’s income according to the legislation of Australia but disregarding in that calculation any Irish benefits received by that person;

(b) deducting the amount of any Irish benefits received by that person from the maximum rate of that Australian benefit; and

(c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the legislation of Australia, using as the person’s income the amount calculated under subparagraph (a).

5. Where a married person is, or both that person and his or her spouse are, in receipt of an Irish benefit or benefits, each of them shall be deemed, for the purpose of paragraph 4 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.

6. If a person would receive an Australian benefit except for the operation of paragraph 4 or except for that person’s failure to claim the benefit, then for the purposes of a claim by that person’s spouse for a payment under the legislation of Australia that person shall be deemed to receive that benefit.

7. The reference in paragraph 6 to a payment under the legislation of Australia to the spouse of a person is a reference to a payment of any benefit, pension or allowance payable under the social security laws of Australia and whether payable by virtue of this Agreement or otherwise.

8. As soon as is practicable after the exchange of letters in which Irish payments are mutually determined for the purposes of paragraph 3, the Minister administering the legislation of Australia shall cause to be published in the Commonwealth of Australia Gazette a notice specifying such Irish payments.

PART III—PROVISIONS RELATING TO IRISH BENEFITS

ARTICLE 10

Totalisation for Ireland

1. Notwithstanding the provisions of paragraphs 2 and 3 of this Article where a person is entitled to an Irish benefit by virtue of his or her Irish periods of insurance alone, that benefit shall be payable and the provisions of paragraph 2 of this Article shall not apply.

2. Subject to paragraph 4, if a person is not entitled to an Irish benefit on the basis of his or her Irish periods of insurance alone, then such periods shall be totalised with periods of residence in Australia, in accordance with the provisions of paragraph 3. The person’s entitlement to benefit shall be determined on the basis of the totalised periods in accordance with the statutory contribution conditions provided for under the legislation of Ireland and the amount of Irish benefit payable shall be calculated in accordance with the provisions of Article 11.

3. For the purposes of determining entitlement to an Irish benefit in accordance with the provisions of paragraph 2, a period of residence in Australia by a person shall be considered to be a period in respect of which the person has qualifying contributions under the legislation of Ireland.

4. For the purposes of paragraph 3, each calendar week or part thereof in which a person has a period of residence in Australia shall be deemed to be a contribution week in respect of which the person has a qualifying contribution under the legislation of Ireland.

5. Where a period of residence in Australia and an Irish period of insurance coincide, the period of coincidence shall be taken into account once only by Ireland as an Irish period of insurance.

6. Subject to paragraph 7, if the total duration of the Irish periods of insurance completed under the legislation of Ireland is less than one year and if, taking into account only those periods, no right to a benefit exists under that legislation, the Competent Authority of Ireland will not be required to award benefits in respect of those periods by virtue of this Agreement.

7. For the purpose of determining entitlement to a death grant or orphan’s (contributory) allowance:

(a) periods of residence in Australia shall be taken into account as if they were Irish periods of insurance completed under the legislation of Ireland;

(b) periods of residence in Australia shall be converted into Irish periods of insurance in accordance with the provisions of paragraph 3, with the exception that no period of residence in Australia prior to 1 October 1970 shall be taken into account for the purposes of determining entitlement to a death grant.

8. For the purposes of determining entitlement of a person to an invalidity pension, any period of continuous incapacity for work which occurs during a period of residence in Australia by that person shall be deemed to be a period of continuous incapacity in the territory of Ireland.

9. For the purposes of converting periods of residence in Australia into Irish periods of insurance as provided for in paragraphs 3 and 7, periods of residence in Australia which occur either before a person attains the age of 16 years or after a person attains pensionable age in Australia shall not be taken into account.

ARTICLE 11

Calculation of Irish Benefits

1. Where a person is entitled to an Irish benefit by virtue of the totalisation arrangements prescribed in Article 10, the Competent Institution of Ireland shall calculate the amount of benefit, other than death grant and orphan’s (contributory) allowance, as follows:

(a) the amount of the theoretical benefit exclusive of any additional amount, or supplement or any increase other than an increase for an adult dependent which would be payable if all the periods of residence in Australia and all the Irish periods of insurance had been completed under Irish legislation;

(b) the proportion of such theoretical benefit which bears the same relation to the whole as the total of Irish periods of insurance completed under the legislation of Ireland bears to the total of all periods of residence in Australia and Irish periods of insurance.

 The proportionate amount thus calculated plus any additional amount, supplement or increase other than an increase for an adult dependent shall be the rate of benefit actually payable by the Competent Institution of Ireland.

2. In the case of death grant and orphan’s (contributory) allowance the amount of benefit payable shall be calculated in accordance with the relevant contribution conditions under the legislation of Ireland taking account of the provisions of Article 10(7).

PART IV—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 12

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of either of the Parties in accordance with administrative arrangements made pursuant to Article 16 at any time after the Agreement enters into force.

2. The date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of the other Party shall be treated, for the purposes of assessing entitlement to benefit, as the date of lodgement of that document with the Competent Institution of the first Party.

3. In relation to Australia, the reference in this Article to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by the social security laws of Australia.

ARTICLE 13

Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:

(a) a period as an Australian resident and an Irish period of insurance; and

(b) any event or fact which is relevant to that eligibility or entitlement,

 shall, subject to this Agreement, and to the relevant provisions of the social security laws of each Party, be taken into account in so far as those periods or those events or facts are applicable in regard to that person and whether they were accumulated or occurred before or after the date on which this Agreement enters into force.

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but shall never be earlier than the date on which this Agreement enters into force.

3. (a) In the case of contingencies which occurred before the commencement of this Agreement the amount of a benefit under the legislation of Ireland due only by virtue of this Agreement shall be determined from the date of entry into force of the Agreement at the request of the beneficiary.

 (b) Where a claim for a determination in accordance with subparagraph (a) is submitted within two years from the date of entry into force of the Agreement, the benefit shall be paid from that date; otherwise the benefit shall be paid from the date determined under the legislation of Ireland.

4. Where:

(a) an Australian benefit payable by virtue of this Agreement is claimed or is being paid; and

(b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to an Irish benefit and, if paid, would affect the amount of the Australian benefit,

 that Australian benefit shall not be paid or continue to be paid until a claim is duly lodged for payment of the Irish benefit or if the claim for the Irish benefit is not actively pursued.

5. Where:

(a) a benefit is paid or payable by a Party to a person in respect of a past period;

(b) for all or part of that period, the other Party has paid to that person a benefit under its legislation; and

(c) the amount of the benefit paid by that other Party would have been reduced had the benefit paid or payable by the first Party been paid during that period;

 then

(d) the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period, shall be a debt due by that person to the other Party; and

(e) the other Party may determine that the amount, or any part, of that debt may be deducted from future payments of a benefit payable by that Party to that person.

6. Where the first Party has not yet paid the benefit described in subparagraph 5(a) to the person:

(a) that Party shall, at the request of the other Party, pay the amount of the benefit necessary to meet the debt described in subparagraph 5(d) to the other Party and shall pay any excess to the person; and

(b) any shortfall may be recovered by the other Party under subparagraph 5(e).

7. The Competent Institution receiving a request under paragraph 6 shall transfer the amount of the debt to the Competent Institution making the request.

8. A reference in paragraphs 4, 5 and 6 to a benefit, means, in relation to Australia, a pension, benefit or allowance that is payable under the social security laws of Australia and, in relation to Ireland, any pension, benefit or allowance payable under the laws of Ireland.

ARTICLE 14

Payment of Benefits

1. Benefits of one Party are also payable in the territory of the other Party.

2. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Parties.

3. Where qualification for an Australian benefit is subject to limitations as to time, then references to Australia in those limitations shall be read also as references to the territory of Ireland.

4. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia, becoming again an Australian resident, and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.

ARTICLE 15

Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement:

(a) shall communicate to each other any information necessary for the application of this Agreement;

(b) shall lend their good offices and furnish assistance to one another with regard to the determination or payment of any benefit under this Agreement or the legislation to which this Agreement applies as if the matter involved the application of their own legislation;

(c) shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation insofar as these changes affect the application of this Agreement; and

(d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 16.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any administrative arrangements made pursuant to Article 16.

3. Unless disclosure is required under the laws of a Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or a Competent Institution of that Party by a Competent Authority or a Competent Institution of the other Party is confidential and shall be used only for purposes of implementing this Agreement and the legislation to which this Agreement applies.

4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the Competent Authority or Competent Institution of a Party the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that Party or the other Party; or

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that Party or the other Party.

5. In the application of this Agreement, the Competent Authority and the Competent Institution of a Party may communicate with the other in any official language of that Party.

ARTICLE 16

Administrative Arrangements

The Competent Authorities of the Parties shall make whatever administrative arrangements are necessary in order to implement this Agreement.

ARTICLE 17

Resolution of Difficulties

1. The Competent Authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.

2. The Parties shall consult promptly at the request of either concerning matters which have not been resolved by the Competent Authorities in accordance with paragraph 1.

ARTICLE 18

Review of Agreement

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

PART V—TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 19

Entry Into Force and Termination

1. This Agreement is subject to ratification. The instruments of ratification shall be exchanged at Dublin as soon as possible.

2. Once all constitutional and legislative requirements, including administrative arrangements referred to in Article 16 of this Agreement have been fulfilled this Agreement shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.

3. Subject to paragraph 4, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating the intention of the other Party to terminate this Agreement.

4. In the event that this Agreement is terminated in accordance with paragraph 3, the Agreement shall continue to have effect in relation to all persons who:

(a) at the date of termination, are in receipt of benefits; or

(b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits,

 by virtue of this Agreement.

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

DONE in 2 copies at CANBERRA this EIGHTH day of APRIL, one thousand nine hundred and ninety‑one.

FOR AUSTRALIA: FOR IRELAND:

GRAHAM RICHARDSON MICHAEL WOODS

[Signatures omitted]

# Schedule 9—Portugal

Note: See section 5.

AGREEMENT between THE GOVERNMENT OF AUSTRALIA and THE GOVERNMENT OF THE REPUBLIC OF PORTUGAL ON SOCIAL SECURITY

The Government of Australia and the Government of the Republic of Portugal,

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

Resolved to coordinate their social security systems;

Have agreed as follows:

PART I—GENERAL PROVISIONS

ARTICLE 1

Definitions

1. In this Agreement, unless the context otherwise requires:

(a) “benefit” means, in relation to a Party, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that benefit, pension or allowance, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

(b) “carer’s pension” means a carer’s pension payable to a spouse under the legislation of Australia;

(c) “Competent Authority” means:

 in relation to Australia: the Secretary to the Department of Social Security; and, in relation to Portugal: the Minister or other corresponding authority responsible for the social security schemes in all or any part of the territory of Portugal;

(d) “Competent Institution” means:

 in relation to Australia: the Competent Authority for Australia; and, in relation to Portugal: the Institution responsible under the legislation of Portugal for dealing with a claim for a Portuguese benefit;

(e) “Institution” means:

 in relation to Australia: the Department of Social Security; and, in relation to Portugal: the body responsible for the implementation of the legislation of Portugal;

(f) “legislation” means, in relation to a Party, the laws specified in Article 2;

(g) “period of residence in Australia”, in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 11 to be a period in which that person was an Australian resident;

(h) “Portuguese insurance period” means the period of contributions or any equivalent period which has been or can be used to acquire the right to a benefit under Portuguese legislation, but does not include any period considered under paragraph 1 of Article 13 as a Portuguese insurance period;

(i) “territory” means, in relation to Portugal, the territory of the Republic of Portugal on the European continent and the archipelagos of the Azores and Madeira; and, in relation to Australia, Australia as defined in the legislation of Australia;

(j) “widow” means:

 in relation to Australia: a de jure widow or a dependent female; and, in relation to Portugal: a de jure widow or an unmarried or legally separated woman covered by paragraph 1 of Article 2020 of the Civil Law Code;

 but does not include a woman who is the de facto spouse of a man.

2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the legislation of either Party or, in the event of a conflict of meanings, by whichever of those laws is the more applicable to the circumstances of that person.

ARTICLE 2

Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:

(a) in relation to Australia: the *Social Security Act 1947* in so far as the Act provides for, applies to or affects the following benefits:

 ‑ age pensions;

 ‑ invalid pensions;

 ‑ wives’ pensions;

 ‑ carers’ pensions;

 ‑ benefits payable to widows;

 ‑ unemployment benefits; and

 ‑ sickness benefits; and

(b) in relation to Portugal:

(i) the legislation relating to the General Scheme and the Special Schemes (including the Voluntary Social Insurance Scheme and excluding provisions for Civil Servants or persons treated as such) of the Social Security System in respect of the following benefits:

 ‑ old age pensions;

 ‑ invalid pensions;

 ‑ survivors’ pensions and death grant;

 ‑ sickness and maternity benefits;

 ‑ unemployment benefits;

 ‑ funeral grant; and

 ‑ family allowance for pensioners (including pensioners under the legislation relating to work injury and occupational diseases);

(ii) the legislation relating to work injury and occupational diseases pensions; and

(iii) the legislation relating to the non‑contributory scheme in respect of old age, invalid and survivors’ pensions.

2. Unless otherwise provided in this Agreement, the laws referred to in paragraph 1 shall not include any treaty or other international agreement or supra‑national legislation on social security which may be in force between either Party and a third State or third States, or laws or regulations promulgated for their specific implementation.

3. This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries only if the two Parties so agree in a Protocol to this Agreement.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

(a) is or has been an Australian resident; or

(b) is or has been subject to the legislation of Portugal;

and, where applicable, to any other person with respect to the rights he or she derives from such a person described in subparagraph (a) or (b).

ARTICLE 4

Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

ARTICLE 5

Voluntary Social Insurance

As soon as an Australian citizen is deemed to be a resident in Portugal that person shall be entitled to register with the Voluntary Social Insurance Scheme under the legislation of Portugal on the same basis as a national of Portugal.

ARTICLE 6

Payment of Benefits

1. Subject to paragraph 4, benefits of one Party are also payable in the territory of the other Party.

2. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Parties.

3. Where qualification for a benefit of one Party is subject to limitations as to time, then reference to that Party in those limitations shall be read also as references to the territory of the other Party.

4. Notwithstanding any provision of this Agreement unemployment benefits and sickness benefits under the legislation of Australia shall not be paid outside the territory of Australia and sickness and maternity benefits and unemployment benefits under the legislation of Portugal and Portuguese pensions specified in Article 2(1)(b)(iii) shall not be paid outside the territory of Portugal.

PART II—PROVISIONS ON COVERAGE

ARTICLE 7

Application of Legislation

1. Except as otherwise provided in this Agreement, the persons to whom this Agreement applies shall be covered by:

(a) Portuguese legislation if they are resident or employed in Portugal; or

(b) Australian legislation if they are Australian residents.

2. Where a person is entitled to claim a benefit under the legislation of a Party that legislation shall also apply to that person.

ARTICLE 8

Decisions on Coverage

The Competent Authorities will, in accordance with their countries’ respective legislation, decide on the coverage to be applied in the best interests of a person.

PART III—PROVISIONS RELATING TO BENEFITS

SECTION 1—AUSTRALIAN BENEFITS

ARTICLE 9

Residence or Presence in Portugal or a Third State

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not an Australian resident and in Australia on the date on which he or she lodges a claim for that benefit but he or she:

(a) is an Australian resident or residing in the territory of Portugal or a third State with which Australia has concluded an agreement on social security that includes provision for co‑operation in the assessment and determination of claims for benefits; and

(b) is in Australia, or the territory of Portugal or that third State;

 that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

2. Paragraph 1 shall not apply to a claimant for a wife’s pension or carer’s pension who has never been an Australian resident.

ARTICLE 10

Spouse Related Australian Benefits

For the purposes of this Agreement, a person who receives from Australia an Australian benefit due to the fact that the spouse of that person receives, by virtue of this Agreement, another Australian benefit shall be deemed to receive that first‑mentioned benefit by virtue of this Agreement.

ARTICLE 11

Totalisation for Australia

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

(a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the legislation of Australia for a benefit; and

(b) a period of residence in Australia equal to or greater than the period identified in accordance with paragraph 4 for that person;

 and a Portuguese insurance period, then for the purposes of a claim for that Australian benefit, that Portuguese insurance period shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia, to be a period in which that person was an Australian resident.

2. For the purposes of paragraph 1, where a person:

(a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and

(b) has accumulated a Portuguese insurance period in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a);

 the total of the Portuguese insurance periods shall be deemed to be one continuous period.

3. Where a period by a person as an Australian resident and a Portuguese insurance period coincide, the period of coincidence shall be taken into account once only by Australia for the purposes of this Article as a period as an Australian resident.

4. The period of residence in Australia (as defined in Article 1) to be taken into account for the purposes of paragraph 1(b) shall be as follows:

(a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least 6 months must be continuous; and

(b) for the purposes of an Australian benefit that is payable to an Australian resident, no period of residence in Australia shall be required.

ARTICLE 12

Calculation of Australian Benefits

1. Subject to paragraphs 2 and 3, where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia but when assessing the income of that person for the purposes of calculating the rate of the Australian benefit only a proportion of any Portuguese benefit paid to that person under the legislation specified in Article 2(1)(b)(i) or (ii) shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of residence in Australia (not exceeding 300) by the amount of that Portuguese benefit and dividing that product by 300.

2. A person referred to in paragraph 1 shall be entitled to receive the concessional assessment of income described in that paragraph only for any period during which the rate of that person’s Australian benefit is proportionalised under the legislation of Australia.

3. When an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is resident in the territory of Portugal, Australia shall disregard, when assessing the income of that person:

(a) any benefit paid to that person under the legislation specified in Article 2(1)(b)(iii); and

(b) any non‑contributory supplement paid to that person by Portugal to bring the amount of that person’s Portuguese benefit to the minimum level guaranteed under the legislation of Portugal.

4. Subject to paragraph 5, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:

(a) calculating that person’s income according to the legislation of Australia but disregarding in that calculation the Portuguese benefit or benefits received by that person;

(b) deducting the amount of the Portuguese benefit or benefits received by that person from the maximum rate of that Australian benefit; and

(c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the legislation of Australia, using as the person’s income the amount calculated under subparagraph (a).

5. Where a married person is, or both that person and his or her spouse are, in receipt of a Portuguese benefit or benefits, each of them shall be deemed, for the purpose of paragraph 4 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

6. If a person would receive an Australian benefit except for the operation of paragraph 4 or except for that person’s failure to claim the benefit, then for the purposes of a claim by that person’s spouse for a payment under the legislation of Australia that person shall be deemed to receive that benefit.

7. The reference in paragraph 6 to a payment under the legislation of Australia to the spouse of a person is a reference to a payment of any benefit, pension or allowance payable under the *Social Security Act 1947* as amended from time to time and whether payable by virtue of this Agreement or otherwise.

SECTION 2—PORTUGUESE BENEFITS

SUB‑SECTION 1—OLD‑AGE, INVALID AND SURVIVORS’ PENSIONS

ARTICLE 13

Totalisation for Portugal

1. Where this Agreement applies and there is a Portuguese insurance period that is:

(a) less than the period necessary to give a claimant entitlement to the benefit claimed under the legislation of Portugal; and

(b) equal to or greater than the period mentioned in paragraph 3 for that benefit;

 then any period of residence in Australia by the contributor to whom that Portuguese insurance period was credited shall be deemed to be a Portuguese insurance period.

2. For the purposes of this Article, where a Portuguese insurance period and period of residence in Australia coincide, the period of coincidence shall be taken into account once only as a Portuguese insurance period.

3. The Portuguese insurance period to be taken into consideration for the purposes of paragraph 1(b) shall be 12 months.

4. For the purposes of this Article the upper age limit for a woman, set in the definition of a period of residence in Australia in the legislation of Australia, shall be raised to the age pension age for a woman for the purposes of claiming an old age pension under the legislation of Portugal.

ARTICLE 14

Rules for the Granting of Portuguese Pensions

1. Subject to paragraph 3, the Portuguese Institution shall determine the rate of Portuguese benefits in accordance with Portuguese legislation and, in relation to old age pension, invalid pension and survivor’s pension, the calculation shall be based directly and exclusively on Portuguese insurance periods and equivalents completed under Portuguese legislation.

2. If the total of any pensions paid by both Parties to a person residing in Portugal is less than the minimum pension fixed by Portuguese legislation, the Competent Institution of Portugal will pay to that person an amount equal to that difference.

3. For the purposes of calculating any supplement to be paid by Portugal to an Australian resident to bring Portuguese benefit paid, other than by virtue of this Agreement, to that person to the minimum level fixed by Portuguese legislation, any Australian benefit paid to that person by virtue of this Agreement shall not be taken into account.

4. Entitlement to Portuguese pensions paid by virtue of this Agreement shall have regard to occupational activity carried out in the territory of Australia as if that activity was carried out in the territory of Portugal.

5. In the assessment of income for the calculation of the rate of a spouse’s supplement under the legislation of Portugal, wife’s pension payable under the legislation of Australia shall not be taken into account.

SUB‑SECTION 2—OTHER PORTUGUESE BENEFITS

ARTICLE 15

Sickness and Maternity Benefits

Where a person, after his or her last arrival in the territory of Portugal, has accomplished a contribution period under Portuguese legislation for the purposes of eligibility for a sickness or maternity benefit under that legislation, the periods of residence in Australia shall be deemed as periods accomplished under Portuguese legislation, provided that they do not coincide.

ARTICLE 16

Unemployment Benefit

Where a person, after his or her last arrival in the territory of Portugal, has accomplished a contribution period of at least four weeks under Portuguese legislation for the purposes of eligibility for unemployment benefit under that legislation, the periods of residence in Australia, during which an occupational activity has been pursued as an employee or Australian unemployment benefit has been awarded as a result of no longer being an employee, shall be deemed as periods accomplished under Portuguese legislation, provided that they do not coincide.

ARTICLE 17

Family Allowance for Pensioners

Family allowances payable under the legislation of Portugal:

(a) shall be payable by virtue of this Agreement to pensioners who are residing in Australia and receiving a pension under the legislation of Portugal be they Australian citizens or Portuguese nationals;

(b) shall not preclude the payment of family allowance under the *Social Security Act 1947* of Australia as amended from time to time;

and shall for the purposes of reciprocity in relation to this Agreement be regarded as the Portuguese benefit equivalent to those Australian benefits described as additional pension and mothers’ and guardians’ allowances for children.

ARTICLE 18

Pensions for Accidents at Work and Occupational Diseases

1. Pensions related to incapacity due to work‑related accidents or occupational diseases according to Portuguese legislation shall be paid by the competent Portuguese institution whenever a person is subject to the legislation applied by it at the time the accident occurred or at the date the occupational disease has been contracted if that person has been pursuing an occupational activity likely to cause that disease according to the legislation of that Party.

2. In order to determine the permanent incapacity rate for work‑related accidents or occupational diseases under Portuguese legislation, work‑related accidents or occupational diseases which qualified a person for a benefit under Australian legislation shall be deemed to have occurred under Portuguese legislation.

PART IV—MISCELLANEOUS PROVISIONS

ARTICLE 19

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of either of the Parties in accordance with administrative arrangements made pursuant to Article 23 at any time after the Agreement enters into force.

2. The date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of that document with the Competent Institution of the first Party.

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

ARTICLE 20

Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:

(a) a period as an Australian resident and a Portuguese insurance period; and

(b) any event or fact which is relevant to that entitlement,

 shall, subject to this Agreement, be taken into account in so far as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but in no case shall that date be a date earlier than the date on which this Agreement enters into force.

3. Where:

(a) a claim is made for a benefit payable by one of the Parties by virtue of this Agreement; and

(b) there are no reasonable grounds for the claimant not to claim a benefit under the legislation of the other Party, whether by virtue of this Agreement or otherwise;

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

4. The provisions of paragraph 3 shall in no way affect the rights of a person under the legislation of Portugal to continue to acquire the right to a benefit under that legislation.

5. Where:

(a) a benefit is paid or payable by a Party to a person in respect of a past period;

(b) for all or part of that period, the other Party has paid to that person a benefit under its legislation; and

(c) the amount of the benefit paid by that other Party would have been reduced had the benefit paid or payable by the first Party been paid during that period;

 then:

(d) the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period shall be a debt due by that person to the other Party; and

(e) the other Party may determine that the amount, or any part, of that debt may be deducted from future payments of a benefit payable by that Party to that person.

6. Where the first Party has not yet paid the arrears of benefit described in subparagraph 5(a) to the person:

(a) that Party shall, at the request of the other Party, pay the amount of the debt described in subparagraph 5(d) to the other Party and shall pay any excess to the person; and

(b) any shortfall in those arrears may be recovered by the other Party under subparagraph 5(e).

7. A reference in paragraph 3, 5 or 6 to a benefit, in relation to Australia, means a pension, benefit or allowance that is payable under the *Social Security Act 1947* of Australia as amended from time to time, and in relation to Portugal means any pension, benefit, allowance or advance made by a Competent Institution including overpayments which arise because of the payment of Portuguese and Australian benefits.

ARTICLE 21

Payment of Benefits

1. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.

2. A Party that imposes restrictions described in paragraph 1 shall inform the other Party of those restrictions within one calendar month of their imposition and shall adopt the measures described in paragraph 1 within three months of the imposition of those restrictions. If the other Party is not so informed or if the necessary measures are not adopted within the set time, the other Party may treat such a failure as a material breach of the Agreement and as sufficient justification for termination or suspension of the Agreement between the Parties.

3. A benefit payable by a Party by virtue of this Agreement to a person outside the territory of that Party shall be paid without deduction for government administrative fees and charges for processing and paying that benefit.

4. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia, becoming again an Australian resident, and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.

ARTICLE 22

Exchange of Information and Mutual Assistance

1. The Competent Authorities shall:

(a) advise each other of laws that amend, supplement or replace the legislation of their respective Parties, promptly after the first‑mentioned laws are made;

(b) advise each other directly of internal action to implement this Agreement and any Administrative Arrangement adopted for its implementation; and

(c) advise each other of any technical problems encountered when applying the provisions of this Agreement or of any Administrative Arrangement made for its implementation.

2. The Institutions of both Parties shall:

(a) advise each other of any information necessary for the application of this Agreement or of the respective legislation of the Parties concerning all matters within their area of competence arising under this Agreement or under those laws;

(b) assist one another in relation to the determination of any benefit under this Agreement or the respective legislation within the limits of and according to their own laws; and

(c) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 23.

3. The assistance referred to in paragraphs 1 and 2 shall be provided free of charge, subject to any Administrative Arrangement made pursuant to Article 23.

4. Any information about a person which is transmitted in accordance with this Agreement to an Institution shall be protected in the same manner as information obtained under the legislation of that Party.

5. In no case shall the provisions of paragraphs 1, 2 and 3 be construed so as to impose on the Competent Authority or Institution of a Party the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party; or

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Party.

6. In the application of this Agreement, the Competent Authority and the Institutions of a Party may communicate with the other in the official language of that Party.

7. In this Article the meaning of “legislation” is not confined by any restrictions imposed by Article 2.

ARTICLE 23

Administrative Arrangements

The Competent Authorities of the Parties shall make whatever administrative arrangements are necessary in order to implement this Agreement.

ARTICLE 24

Resolution of difficulties

1. The Competent Authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.

2. The Parties shall consult promptly at the request of either concerning matters which have not been resolved by the Competent Authorities in accordance with paragraph 1.

ARTICLE 25

Review of Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the territory of the Party to which that request was made.

PART V—FINAL PROVISIONS

ARTICLE 26

Entry Into Force and Termination

1. This Agreement shall enter into force on the first day of the month following the finalisation of an exchange of notes by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalized.

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating the intention of the other Party to terminate this Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who:

(a) at the date of termination, are in receipt of benefits; or

(b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits,

 by virtue of this Agreement.

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

DONE in 2 copies at LISBON this THIRTIETH day of APRIL, NINETEEN HUNDRED AND NINETY ONE in the English and Portuguese languages, each text being equally authoritative.

FOR THE GOVERNMENT OF FOR THE GOVERNMENT OF

AUSTRALIA THE REPUBLIC OF PORTUGAL

GRAHAM RICHARDSON JOSE ALBINO DA SILVA PENEDA

[Signatures omitted]

# Schedule 10—Austria

Note: See section 5.

AGREEMENT between AUSTRALIA and the REPUBLIC OF AUSTRIA ON SOCIAL SECURITY

AUSTRALIA AND THE REPUBLIC OF AUSTRIA,

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

And

Resolved to co‑operate in the field of social security;

Have agreed as follows:

PART I—INTERPRETATION AND SCOPE

GENERAL PROVISIONS

ARTICLE 1

Interpretation

1. In this Agreement:

(a) “national” means, in relation to Australia, an Australian citizen; and, in relation to Austria, an Austrian citizen;

(b) “legislation” means, in relation to Australia, the law specified in subparagraph 1(a) of Article 2; and, in relation to Austria, the laws, regulations and statutory instruments which relate to the branches of social security specified in subparagraph 1(b) of Article 2;

(c) “competent authority” means in relation to Australia, the Secretary to the Department of Social Security; and, in relation to Austria, the Federal Minister responsible for the application of the legislation specified in subparagraph 1(b) of Article 2;

(d) “institution” means, in relation to Australia, the Department of Social Security; and, in relation to Austria, the institution responsible for the application of the Austrian legislation;

(e) “competent institution” means, in relation to Australia, the Department of Social Security; and, in relation to Austria, the institution competent under the Austrian legislation to deal with the matter in question;

(f) “period of Australian working life residence”, in relation to a person, means a period defined as such in the legislation of Australia but does not include any period deemed pursuant to Article 6 to be a period in which that person was an Australian resident;

(g) “period of insurance in Austria” means a period of insurance defined as such in the Austrian legislation;

(h) “benefit” means, in relation to a Party, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that benefit, pension or allowance;

(i) “carer pension” means, in relation to Australia, a carer pension payable to a partner under the legislation of Australia;

(j) “widowed person” means, in relation to Australia, a person who:

(i) stops being a married person or becomes a single person because of the death of the person’s husband or wife; or

(ii) is a class B widow because of the death of her husband or because she is a dependent female,

 but does not include a person who has a new partner;

(k) “refugee” means a person defined as a refugee in Article 1 of the Convention relating to the Status of Refugees, dated 28 July 1951, and the Protocol to that Convention, dated 31 January 1967;

(l) “stateless person” means a person defined as a stateless person in Article 1 of the Convention relating to the Status of Stateless Persons, dated 28 September 1954.

2. In the application of this Agreement, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it by the legislation of either Party.

ARTICLE 2

Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to:

(a) in relation to Australia: the *Social Security Act 1991* insofar as the Act provides for, applies to or affects:

(i) age pensions,

(ii) invalid pensions,

(iii) wife pensions,

(iv) carer pensions; and

(v) benefits payable to widowed persons; and

(b) in relation to Austria the legislation concerning pension insurance with the exception of the insurance for notaries.

2. Except as otherwise provided in paragraph 3 this Agreement shall also apply to any legislation which supersedes, replaces, amends, supplements or consolidates the legislation specified in paragraph 1.

3. Notwithstanding the provisions of paragraph 1:

(a) the legislation of Australia shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security; and

(b) this Agreement shall not affect any other agreement on social security which Austria has concluded with a third State, except as it contains provisions relating to the apportionment of insurance burdens.

ARTICLE 3

Personal Scope

This Agreement shall apply without any restriction based on nationality to any person who:

(a) is or has been an Australian resident; or

(b) is or has been subject to the Austrian legislation,

and where applicable, to any other person with respect to the rights he or she derives from such a person described in subparagraph (a) or (b).

ARTICLE 4

Equality of Treatment

1. Unless otherwise provided in this Agreement, nationals of one Party shall, in the application of the legislation of the other Party, receive equal treatment with the nationals of that other Party.

2. Benefits under the legislation of one Party shall be granted to nationals of the other Party resident outside the territories of both Parties, under the same conditions and to the same extent as they are granted to the nationals of the first party who reside outside the territories of the Parties.

3. Paragraph 1 shall not apply to the provisions of the Austrian legislation concerning:

(a) the participation of insured persons and employers in the administration of institutions and associations as well as adjudication in the field of social security;

(b) the apportionment of insurance burdens resulting from agreements with third States; or

(c) the insurance of persons employed at a diplomatic mission or consular post of Austria in a third State or by a member of such a mission or post.

4. Paragraph 1 shall apply with regard to the provisions of Austrian legislation concerning the taking into account of periods of war service and of periods considered as such only to Australian nationals who were Austrian nationals immediately before 13 March 1938.

ARTICLE 5

Equivalence of Territories

1. Unless otherwise provided in this Agreement any provision of the legislation of a Party under which qualification for or payment of a benefit is dependent on a person being a resident of, and/or present in the territory of that Party shall not apply to nationals of either Party, refugees or stateless persons, or other persons who derive rights from the foregoing, who are resident in the territory of either Party and present in the territory of either Party.

2. Benefits of a Party are payable at the request of the beneficiary in the territory of the other Party.

3. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Parties.

4. In relation to Australia:

(a) Paragraph 1 shall apply without regard to nationality.

(b) Paragraph 1 shall not apply to a claimant for a wife pension or carer pension who has never been an Australian resident or to rental allowance.

(c) Where qualification for an Australian benefit is subject to limitations as to time, then references to Australia in those limitations shall be read also as references to the territory of Austria.

(d) Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for an Australian benefit except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged but:

(i) is an Australian resident or residing in the territory of Austria or a third State with which Australia has concluded an agreement on social security that includes provisions for cooperation in the assessment and determination of claims for benefits; and

(ii) is in Australia, or in the territory of Austria or that third State,

 that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

5. As regards the Austrian legislation, paragraph 1 shall not apply to the compensatory supplement (Ausgleichszulage).

PART II—PROVISIONS CONCERNING AUSTRALIAN BENEFITS

ARTICLE 6

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has, without the application of this Agreement, accumulated:

(a) a period as an Australian resident that is less than the period required to qualify him or her, on that ground, under the legislation of Australia for a benefit; and

(b) a period of Australian working life residence equal to or greater than the minimum period identified in accordance with paragraph 4 for that person

 and has accumulated a period of insurance in Austria, then for the purposes of a claim for that Australian benefit, that period of insurance in Austria shall be deemed, only for the purposes of this Article for meeting any period required for qualification for that benefit set out in the legislation of Australia, to be a period in which that person was an Australian resident.

2. For the purposes of paragraph 1, where a person:

(a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and

(b) has accumulated a period of insurance in Austria in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a),

 the total of the periods of insurance in Austria shall be deemed to be one continuous period.

3. For all purposes of this Article, where a period by a person as an Australian resident and a period of insurance in Austria coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

4. The minimum period of residence in Australia to be taken into account for the purposes of paragraph 1 shall be as follows:

(a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period shall be twelve months of which at least six months must be continuous; and

(b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum.

5. For the purposes of a claim by a person for a pension payable to a widowed person, that person shall be deemed to have accumulated a period of insurance in Austria for any period for which his or her partner accumulated a period of insurance in Austria but any period during which the person and his or her partner both accumulated a period of insurance in Austria shall be taken into account once only.

ARTICLE 7

1. Subject to paragraph 2, where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside the territory of Australia, the rate of that benefit shall be determined according to the legislation of Australia but when assessing the income of that person for the purposes of calculating the rate of the Australian benefit only a proportion of any Austrian benefit which is received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of Australian working life residence (not exceeding 300) by the amount of that Austrian benefit and dividing that product by 300.

2. A person referred to in paragraph 1 shall only be entitled to receive the concessional assessment of income described in that paragraph for any period during which the rate of that person’s Australian benefit is proportionalised under the legislation of Australia.

3. Where an Australian benefit is payable by virtue of this Agreement or otherwise to a person who is in Austria, any compensatory supplement or social assistance and similar means‑tested payment paid by Austria to that person shall be disregarded by Australia in computing that person’s income for the purposes of the legislation of Australia or the application of this Agreement.

4. Subject to the provisions of paragraph 5, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:

(a) calculating that person’s income according to the legislation of Australia but disregarding in that calculation the Austrian benefit received by that person;

(b) deducting the amount of the Austrian benefit received by that person from the maximum rate of that Australian benefit; and

(c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the legislation of Australia, using as the person’s income the amount calculated under subparagraph (a).

5. Where the rate of a benefit calculated in accordance with paragraph 4 is less than the rate of that benefit which would be payable under paragraphs 1, 2 and 3 if the person concerned were outside Australia, the first‑mentioned rate shall be increased to an amount equivalent to the second‑mentioned rate.

6. Where a married person is, or both that person and his or her partner are, in receipt of an Austrian benefit or benefits, each of them shall be deemed, for the purposes of paragraph 4 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.

7. For the purposes of paragraph 5, a comparison of the rates of the benefits shall be made as at:

(a) the date of the first pension pay day occurring after the date from which the benefit is payable; and

(b) each anniversary of that pension pay day for so long as the person concerned is entitled to the benefit;

 using, in that comparison, the number of months of the period of Australian working life residence accumulated by the person at the date as at which the comparison is made.

ARTICLE 8

A person who receives from Australia an Australian benefit due to the fact that the partner of that person receives, by virtue of this Agreement, another Australian benefit shall, for the purposes of this Agreement, be deemed to receive that first‑mentioned benefit by virtue of this Agreement.

PART III—PROVISIONS CONCERNING AUSTRIAN BENEFITS

ARTICLE 9

If a person has completed periods of insurance in Austria and periods of Australian working life residence, those periods, insofar as they do not overlap, shall be added together for the purpose of qualification for an Austrian benefit.

ARTICLE 10

1. If a person who has completed periods of insurance in Austria and periods of Australian working life residence, or the survivor of such a person, is claiming a benefit, the competent institution for Austria shall determine the amount of the benefit in the following manner:

(a) the institution shall determine, in accordance with the Austrian legislation, whether the person concerned has an entitlement to a benefit by adding together the periods as provided in Article 9;

(b) if entitlement to a benefit is determined to exist, the institution shall first calculate the theoretical amount of the benefit which would be payable if all the periods completed under the legislation of both Parties had been completed exclusively under the Austrian legislation; in cases where the amount of the benefit is independent of the duration of the period of insurance, this amount shall be taken to be the theoretical amount; and

(c) the institution shall then calculate the partial benefit payable on the basis of the amount calculated in accordance with the provisions of subparagraph (b) in proportion to the ratio between the duration of the periods of insurance to be taken into consideration under the Austrian legislation and the total duration of the periods to be taken into consideration under the legislation of both Parties.

2. Where the periods of insurance to be taken into consideration under the Austrian legislation for the purpose of calculating the amount of a benefit are in aggregate less than twelve months, no benefit under that legislation shall be paid. However, the preceding sentence shall not apply if the entitlement to that benefit has been acquired under the Austrian legislation exclusively on the basis of periods of insurance completed under that legislation.

ARTICLE 11

The competent Austrian institution shall apply Articles 9 and 10 according to the following rules:

1. In determining the institution responsible for paying a benefit, only periods of insurance in Austria shall be taken into consideration.

2. Periods of Australian working life residence, during which the person concerned was employed or self‑employed, shall be treated as periods of contributions.

3. Articles 9 and 10 shall apply neither to the conditions of entitlement to nor to the payment of the miners’ long service allowance under the miners’ pension insurance.

4. For the application of paragraph 1 of Article 10, the following shall apply:

(a) periods during which the insured person has been entitled to an age pension or invalid pension under the legislation of Australia shall be treated as if they were neutral periods;

(b) the basis of assessment shall be determined exclusively on periods of insurance in Austria;

(c) the contributions for supplementary insurance as well as the miners’ supplementary benefit, the helpless person’s allowance and the compensatory supplement shall be disregarded.

5. For the application of subparagraphs 1(b) and (c) of Article 10, overlapping periods under the legislation of the two Parties shall be taken into consideration as if they did not overlap.

6. If, for the application of subparagraph 1(c) of Article 10, the total duration of the periods to be taken into consideration under the legislation of both Parties exceeds the maximum number of months of insurance specified under the Austrian legislation for the calculation of the rate of increments, the partial pension payable shall be calculated in proportion to the ratio between the duration of the periods of insurance to be taken into consideration under the Austrian legislation and the above‑mentioned maximum number of months of insurance.

7. For the calculation of the helpless person’s allowance, subparagraphs 1(b) and (c) of Article 10 shall apply; Article 13 shall apply accordingly.

8. The amount calculated according to subparagraph 1(c) of Article 10 shall be increased, where applicable, by the increments for contributions for supplementary insurance as well as the miners’ supplementary benefit, the helpless person’s allowance and the compensatory supplement.

9. If the award of benefits under the miners’ pension insurance depends on the completion of essentially mining activities, within the meaning of the Austrian legislation, in specific undertakings, then only those periods of Australian working life residence during which the person was employed in a similar occupation in similar undertakings shall be taken into consideration.

10. The special payments shall be payable in the same amount as the Austrian partial benefit; Article 13 shall apply accordingly.

ARTICLE 12

1. Where entitlement to a benefit exists under the Austrian legislation without the application of Article 9, the competent Austrian institution shall pay the pension which would be payable exclusively on the basis of the periods of insurance to be taken into consideration under that legislation, provided there is no entitlement to a corresponding benefit under the legislation of Australia.

2. The pension determined in accordance with paragraph 1 shall be recalculated in accordance with the provisions of Article 10 as soon as entitlement arises to a corresponding benefit under the legislation of Australia. This recalculation shall have effect from the date on which the benefit under the legislation of Australia becomes payable. The irrevocability of previous decisions shall not prevent this recalculation.

ARTICLE 13

If a person is entitled to a benefit under the Austrian legislation without the application of Article 9, and if such a benefit would be greater than the total of the Austrian benefit calculated in accordance with subparagraph 1(c) of Article 10 and the corresponding Australian benefit, the competent Austrian institution shall pay, as the partial benefit, its benefit so calculated increased by the difference between such total and the benefit which would be payable if the Austrian legislation alone were applied.

PART IV—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 14

Lodgement of documents

1. The date on which a claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Party is lodged with an authority, institution or other competent body of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of that document with an authority, institution or other competent body of the first Party.

2. Any claim for a benefit under the legislation of a Party shall be considered to be a claim for the corresponding benefit under the legislation of the other Party for which the applicant may be qualified if the applicant provides information at the time of claim indicating that the person on whose record benefits are claimed has completed relevant periods of residence or of insurance under the legislation of the other Party and:

(a) the claim is lodged with the institution of the other Party; or

(b) the claim is lodged with the institution of the first Party and that institution sends the claim within three months of its lodgement with that institution to the competent institution of the other Party.

3. In the case to which paragraphs 1 and 2 of this Article apply, the body to which the submission has been made shall forward the claim, notice or appeal without delay to the corresponding competent body of the other Party.

ARTICLE 15

Advance Payments and Overpayments

1. Where an Austrian institution has made an advance payment to a person for any period and arrears of a corresponding benefit become payable for the same period under the legislation of Australia, the competent institution of Australia shall deduct from those arrears the amount paid by way of advance payment and shall transfer the amount so deducted to the Austrian institution. Where an Austrian institution has overpaid a benefit for any period for which the competent institution of Australia afterwards becomes liable to pay a corresponding benefit, the overpayment shall be regarded, for the purpose of the first sentence, as an advance payment.

2. Where

(a) an Austrian benefit is paid or payable to a person in respect of a past period;

(b) for all or part of that period, an Australian benefit has been paid to that person; and

(c) the amount of the Australian benefit would have been reduced had the Austrian benefit been paid during that period;

 then

(d) the amount of the Australian benefit that would not have been paid had the Austrian benefit described in subparagraph (a) been paid on a periodical basis throughout that past period, shall be a debt due by that person to the Commonwealth of Australia; and

(e) Australia may determine according to the legislation of Australia that the amount or any part of that debt may be deducted from future payments of Australian benefit payable to that person.

3. Where an Austrian institution has not yet paid the benefit described in subparagraph 2(a) to the person:

(a) the Austrian institution shall, at the request of the competent authority of Australia pay the amount of the benefit necessary to meet the debt described in subparagraph 2(d) to the competent institution of Australia and shall pay any excess to the person; and

(b) any shortfall may be recovered by the competent authority of Australia under subparagraph 2(e).

ARTICLE 16

Payment of Benefits

1. The benefit‑paying institution of a Party may discharge its obligations under this Agreement in the national currency of that Party.

2. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party without deduction for administrative fees and charges.

ARTICLE 17

Administrative Arrangements and Mutual Assistance

1. The competent authorities of the Parties shall, by means of an Arrangement, establish the administrative measures necessary for the application of this Agreement.

2. The competent authorities shall inform each other of laws that amend, supplement or replace the legislation of their respective Parties.

3. The competent authorities and institutions of the Parties shall assist each other, including by the communication of any information, in applying the legislation specified in Article 2 and this Agreement, as if they were applying their own legislation. With the exception of cash expenditures relating thereto, such assistance shall be provided free of charge.

4. The laws of a Party concerning confidentiality shall apply to any information about an individual which is transmitted in accordance with this Agreement to that Party by the other Party. Such information shall be used only for purposes of applying this Agreement or the legislation of a Party.

5. The competent authorities of the Parties shall, in order to facilitate the application of this Agreement, particularly for the creation of a simple and fast liaison between the institutions concerned, establish liaison agencies.

6. The institutions and the competent authority of one Party may not reject claims or other documents submitted to them by reason only of the fact that they are written in an official language of the other Party.

7. If the competent institution of one Party requires an applicant or beneficiary who lives in the territory of the other Party to undergo a medical examination, such examination shall, at the request of that institution, be arranged or carried out by the institution of the latter Party at its expense.

ARTICLE 18

Exemption from Taxes and from Authentication

1. Any exemption or reduction provided for in the legislation of one Party for taxes, stamp duty, legal dues or registration fees for certificates or documents which have to be submitted for the application of this legislation shall be extended also to the respective certificates or documents which must be submitted for the application of this Agreement or the legislation of the other Party.

2. Documents and certificates of any kind which must be submitted for the application of this Agreement shall not require authentication.

ARTICLE 19

Resolution of Difficulties

1. Disagreements arising in connection with the application of this Agreement shall, as far as possible, be resolved by mutual agreement between the competent authorities of the Parties.

2. If any such disagreement has not been resolved within a period of six months, either Party may submit the matter to binding arbitration by an arbitral body whose composition and procedure shall be agreed upon by the Parties.

PART V—TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 20

Transitional Provisions

1. This Agreement shall not establish any entitlement to payment of a benefit for a period before its entry into force.

2. In determining entitlement to a benefit under this Agreement, periods of insurance in Austria and periods as an Australian resident completed before the entry into force of this Agreement shall also be taken into consideration.

3. Subject to paragraph 1, this Agreement shall also apply to contingencies which are relevant to an entitlement which occurred before its entry into force, insofar as previously determined entitlements have not been settled by lump‑sum payments. If in such cases the claim for a benefit which is payable only by virtue of this Agreement is submitted within one year from the date of entry into force of this Agreement, the benefit shall be determined and paid from that date; otherwise the benefit shall be paid from the date determined under the legislation of each Party.

4. Subject to the legislation of either Party this Agreement shall not result in any reduction in the amount of any benefit to which entitlement was established prior to its entry into force.

ARTICLE 21

Protection of Existing Rights

This Agreement shall not affect any existing rights under Austrian legislation of any person who has suffered disadvantages in the field of social security because of political or religious reasons or by reason of descent.

ARTICLE 22

Entry into Force and Termination

1. This Agreement shall enter into force on the first day of the third month following the month in which notes are exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Agreement have been finalised.

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of twelve months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of the other Party to terminate this Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who:

(a) at the date of termination, are in receipt of benefits; or

(b) prior to the expire of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits;

 by virtue of this Agreement.

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

DONE in two copies at Canberra this first day of April, 1992 in the English and German languages, each text being equally authoritative.

FOR AUSTRALIA: FOR THE REPUBLIC OF AUSTRIA:

NEAL BLEWETT WALTER HIETSCH

[Signatures omitted]

# Schedule 11—Cyprus

Note: See section 5.

AGREEMENT ON SOCIAL SECURITY between AUSTRALIA and THE REPUBLIC OF CYPRUS

AUSTRALIA AND THE REPUBLIC OF CYPRUS,

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

Resolved to coordinate their social security systems;

Have agreed as follows:

PART I—GENERAL PROVISIONS

ARTICLE 1

Definitions

1. In this Agreement, unless the context otherwise requires:

(a) “benefit” means in relation to a Party, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable in addition to that benefit, pension or allowance to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

(b) “carer pension” means a carer pension payable to the partner of a person who is in receipt of a disability support pension for the severely disabled or an age pension where that partner is legally married to that person;

(c) “Competent Authority” means;

 in relation to Australia:

 the Secretary to the Department of Social Security; and,

 in relation to Cyprus:

 the Minister of Labour and Social Insurance;

(d) “Competent Institution” means;

 in relation to Australia:

 the Department of Social Security; and,

 in relation to Cyprus:

 the Department of Social Insurance Services, Ministry of Labour and Social Insurance;

(e) “legislation” means the laws specified in Article 2;

(f) “period of Australian working life residence”, in relation to a person, means a period defined as such in the legislation of Australia;

(g) “period of insurance” means a period for which contributions have been paid or credited or a period of paid or credited insurable earnings under the legislation of Cyprus;

(h) “territory” means;

 in relation to Australia:

 Australia as defined in the legislation of Australia; and

 in relation to Cyprus:

 the island of Cyprus;

(i) “welfare benefit” means, in relation to Cyprus, any benefit payable under the *Public Assistance Law of 1991* and any law to provide a similar means tested benefit from public funds that subsequently amends, supplements or replaces it and any rent allowance payable out of the Fund established under the *Rent Control Laws of 1983 and 1991* and any law to provide a similar means‑tested rent allowance from public funds that subsequently amends, supplements or replaces them;

 and

(j) “widow” means, in relation to Australia, a de jure widow but does not include a woman who has a partner.

2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the legislation of either Party or, in the event of a conflict of meaning, by whichever of those laws is the more applicable to the circumstances of that person.

ARTICLE 2

Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:

(a) in relation to Australia: the *Social Security Act 1991* in so far as the Act provides for, applies to or affects the following benefits:

(i) age pension;

(ii) disability support pension for the severely disabled;

(iii) pensions payable to widows;

(iv) widowed person allowance; and

(v) carer pension; and

(b) in relation to Cyprus: the *Social Insurance Laws of 1980 to 1990* in so far as the Laws provide for, apply to or affect social insurance benefits for:

(i) age;

(ii) invalidity and work‑related disablement;

(iii) survivorship; and

(iv) funerals.

2. Notwithstanding the provisions of paragraph 1, neither the legislation of Australia nor the legislation of Cyprus shall include any laws made at any time for the purpose of giving effect to any agreement on Social Security.

3. This Agreement shall apply to laws which extend the legislation of either Party to new categories of beneficiaries only if the two Parties so agree in a Protocol to this Agreement.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

(a) is or has been an Australian resident; or

(b) is or has been subject to the legislation of Cyprus,

and, where applicable, to other persons in regard to the rights they derive from the person described above.

ARTICLE 4

Equality of Treatment

Subject to this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

ARTICLE 5

Application of the Legislation of Cyprus

1. Subject to the following paragraphs, where a person to whom this Agreement applies is gainfully occupied in the territory of Cyprus the person’s liability to be insured under the legislation of Cyprus shall be determined under that legislation, even if the person’s place of residence and/or the employer’s place of business is in Australia.

2. Where a person insured under the legislation of Cyprus is sent by an employer to work temporarily in Australia the person shall continue to be subject to the legislation of Cyprus during the first 24 months of employment in Australia.

3. A person who is employed as a member of the crew of a seagoing ship flying the Cyprus flag shall be subject to the legislation of Cyprus if the person is ordinarily resident in Cyprus.

4. Subject to the provisions of paragraph 5, a person employed by the Government or other public corporation of Cyprus sent by that Government or corporation to work in Australia shall continue to be subject to the legislation of Cyprus as if employed in Cyprus. A person employed by the Government or other public corporation of Australia in Cyprus shall be subject to the legislation of Cyprus if ordinarily a resident of Cyprus.

5. This Article does not apply to any person who falls within the scope of the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations.

6. The Competent Authorities of the two Parties may provide, by agreement with one another, exceptions to the provisions of this Article where this is in the interest of persons affected thereby.

7. Where in accordance with the provisions of this Article a person is insured under the legislation of Cyprus while gainfully occupied in Australia, that legislation shall apply to that person as if he or she were gainfully occupied in Cyprus.

PART II—PROVISIONS RELATING TO BENEFITS

AUSTRALIAN BENEFITS

ARTICLE 6

Residence or Presence in Cyprus or a Third State

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged, but:

(a) is an Australian resident or residing in the territory of Cyprus or a third State with which Australia has concluded an agreement on social security that includes provision for co‑operation in the assessment and determination of claims for benefits; and

(b) is in Australia, or the territory of Cyprus or that third State,

 that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

2. Paragraph 1 shall not apply to a claimant for a carer pension who has never been an Australian resident.

ARTICLE 7

Partner related Australian Benefits

A person who receives from Australia any Australian pension, benefit or allowance under the social security laws of Australia due to the fact that the partner of that person receives, by virtue of this Agreement, an Australian benefit, shall be deemed to be receiving that pension, benefit or allowance by virtue of this Agreement but shall cease to qualify for that pension, benefit or allowance, if he or she is not physically present in Australia but, when that person is receiving a carer pension, he or she shall not cease to qualify for that pension while he or she is physically present in Cyprus.

ARTICLE 8

Totalisation for Australia

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

(a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, under the legislation of Australia for a benefit; and

(b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 5 for that person; and

(c) a period of insurance;

 then for the purposes of a claim for that Australian benefit, that period of insurance shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia, to be a period in which that person was an Australian resident.

2. For the purposes of paragraph 1, where a person:

(a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and

(b) has accumulated a period of insurance in two or more separate periods that equals or exceeds in total the period referred to in subparagraph (a),

 the total of the periods of insurance shall be deemed to be one continuous period.

3. For the purposes of converting a person’s period of insurance to a period when that person was an Australian resident:

(a) each week of insurance completed before 6 October 1980 under the legislation of Cyprus shall be treated as a week when that person was an Australian resident under the legislation of Australia; and

(b) the insurable earnings for any period of insurance completed from 6 October 1980 under the legislation of Cyprus shall be divided by the weekly amount of the basic insurable earnings applicable in the relevant contribution year. The figure so calculated, subject to the maximum number of weeks during which the person was subject to that legislation in that year, shall be treated as representing the number of weeks in the insurance period. Each week shall be treated as equivalent to one week when that person was an Australian resident.

4. For all purposes of this Article, where a period by a person as an Australian resident and a period of insurance coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.

5. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:

(a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least six months must be continuous; and

(b) for the purposes of an Australian benefit that is payable to an Australian resident no minimum period shall be required.

ARTICLE 9

Calculation of Australian Benefits

1. Subject to paragraph 2, where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who is outside Australia, the rate of that benefit shall be determined according to the legislation of Australia but, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, only a proportion of any Cyprus social insurance benefit received by that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of residence in Australia (not exceeding 300) by the amount of that Cyprus social insurance benefit and dividing that product by 300.

2. Only a person receiving a proportionalised Australian benefit under the legislation of Australia shall be entitled to receive the concessional assessment of income described in paragraph 1.

3. Where an Australian benefit is payable, whether payable by virtue of this Agreement or otherwise, to a person who is a resident of Cyprus, Australia shall disregard, when assessing the income of that person, any welfare benefit paid to that person by Cyprus.

4. Subject to the provisions of paragraph 5, where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:

(a) calculating that person’s income according to the legislation of Australia but disregarding in that calculation the Cyprus benefit received by that person;

(b) deducting the amount of the Cyprus benefit received by that person from the maximum rate of that Australian benefit; and

(c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the legislation of Australia, using as the person’s income the amount calculated under subparagraph (a).

5. Where a member of a couple is, or both that member and his or her partner are, in receipt of a Cyprus benefit or benefits, each of them shall be deemed, for the purpose of paragraph 4 and for the legislation of Australia, to be in receipt of one half of either the amount of that benefit or total of both of those benefits, as the case may be.

6. If a person would receive an Australian benefit except for the operation of paragraph 4 or except for that person’s failure to claim the benefit, then for the purposes of a claim by that person’s partner for a payment under the legislation of Australia that person shall be deemed to receive that benefit.

7. The reference in paragraph 6 to a payment under the legislation of Australia to the partner of a person is a reference to a payment of any pension, benefit or allowance payable under the social security laws of Australia and whether payable by virtue of this Agreement or otherwise.

PART III—PROVISIONS RELATING TO CYPRUS BENEFITS

ARTICLE 10

Totalisation for Cyprus

1. Subject to paragraph 4, if a person is not entitled to benefit on the basis of insurance periods completed under the legislation of Cyprus alone entitlement for that benefit shall be determined by totalising these periods with periods of Australian working life residence to the extent necessary for entitlement to benefit.

2. In applying the provisions of paragraph 1, no account shall be taken of any period of working life residence in Australia completed prior to 7 January 1957.

3. For the purposes of this Article where a period of insurance and a period of Australian working life residence coincide, the period of coincidence shall be taken into account once only as a period of insurance.

4. Paragraph 1 shall not apply if the period of insurance is less than 52 weeks, except where the required period of insurance for entitlement to a benefit under the legislation of Cyprus is less than 52 weeks.

5. For the purpose of converting a period of Australian working life residence into a period of insurance under the legislation of Cyprus, a person shall be treated for each week of working life residence in Australia as having insurable earnings under the legislation of Cyprus equal to the weekly amount of basic insurable earnings.

ARTICLE 11

Calculation of Cyprus Benefits

1. Subject to paragraph 2, the amount of benefit payable under the provisions of Article 10 shall be determined as follows:

(a) the Competent Institution of Cyprus shall calculate the theoretical basic benefit that would be payable if the periods of insurance completed under the legislation of Cyprus and the periods of Australian working life residence, totalised as provided in paragraph 1 of Article 10, had been periods of insurance under the legislation of Cyprus alone;

(b) it shall then prorate the theoretical basic benefit so calculated by the fraction which represents the ratio of the insurance periods completed under the legislation of Cyprus in relation to the total of the insurance periods completed under that legislation and the periods of Australian working life residence which are taken into account; and

(c) the amount of the supplementary benefit shall be determined exclusively on the basis of periods of insurance completed under the legislation of Cyprus.

2. The amount of the funeral benefit payable under the legislation of Cyprus shall be calculated as if the periods of residence, which are taken into account as provided in paragraph 1 of Article 10, were periods of insurance under the legislation of Cyprus alone.

ARTICLE 12

Work‑related disablement

1. Subject to paragraph 2, pensions for work‑related disablement under the legislation of Cyprus shall be paid by virtue of this agreement in respect of disablement which occurs while a person is insured under that legislation and employed in an occupation which is valid for the purposes of that legislation.

2. The rate of a pension for work‑related disablement paid by virtue of this Agreement shall be calculated as if the impairment which qualified a person for a benefit under the legislation of Australia had occurred under the legislation of Cyprus.

PART IV—MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 13

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by a Party by virtue of this Agreement or otherwise, may be lodged in the territory of the other Party in accordance with the Administrative Arrangement made pursuant to Article 17 at any time after the Agreement enters into force.

2. For the purposes of assessing entitlement to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of a Party shall be treated as the date of lodgement of that document with the Competent Institution of the other.

3. In relation to Australia, the reference in this Article to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by the social security laws of Australia.

ARTICLE 14

Determination of Claims

1. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:

(a) a period as an Australian resident and a period of insurance; and

(b) any event or fact which is relevant to that entitlement,

 shall, subject to this Agreement, be taken into account in so far as those periods, events or facts are applicable in regard to that person no matter when they were accumulated or occurred.

2. The commencement date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but shall never be earlier than the date on which this Agreement enters into force and a funeral grant under the legislation of Cyprus shall not be made if the relevant death occurred before this Agreement enters into force.

3. Where:

(a) a benefit payable by virtue of this Agreement by one of the Parties is claimed or is being paid; and

(b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to a benefit from the other Party and that, if paid, would affect the amount of the first mentioned benefit,

 that first mentioned benefit shall not be paid or continue to be paid until a claim is duly lodged for payment of the benefit from the other Party or if the claim for the other Party’s benefit is not actively pursued.

4. Where:

(a) a benefit is paid or payable by a Party to a person in respect of a past period; and

(b) for all or part of that period, the other Party has paid to that person a benefit under its legislation; and

(c) the amount of the benefit paid by that other Party would have been reduced had the benefit paid or payable by the first Party been paid during that period;

 then

(d) the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period, shall be a debt due by that person to the other Party; and

(e) the other Party may determine that the amount or any part of that debt may be deducted from future payments of a benefit payable by that Party to that person.

5. Where the first Party has not yet paid the benefit described in subparagraph 4(a) to the person:

(a) that Party shall, at the request of the other Party, pay the amount of the benefit necessary to meet the debt described in subparagraph 4(d) to the other Party and shall pay any excess to the person; and

(b) any shortfall may be recovered by the other Party under subparagraph 4(e).

6. The Competent Institution receiving a request under paragraph 5 shall transfer the amount of the debt to the Competent Institution making the request.

7. A reference in paragraphs 3, 4 and 5 to a benefit, in relation to Australia, means a pension, benefit or allowance payable under the social security laws of Australia and, in relation to Cyprus, means any pension, benefit or allowance payable under the social insurance laws of Cyprus.

ARTICLE 15

Payment of Benefits

1. Benefits of one Party, when payable by virtue of this Agreement, are also payable in the territory of the other Party.

2. Where the legislation of a Party provides that a benefit is payable outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Parties.

3. Subject to Article 7, where qualification for a benefit of one Party is subject to limitations as to time, then references to that Party in those limitations shall be read also as references to the territory of the other Party when that benefit is payable by virtue of this Agreement.

4. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.

5. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party without deduction for government administrative fees and charges for processing and paying that benefit whether the beneficiary is in the territory of the other Party or outside the respective territories of both Parties.

6. Any exemption granted in the territory of one of the Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to the Competent Authorities and Competent Institutions in the same territory shall also apply to certificates and documents which, for the purposes of this Agreement, have to be submitted to the Competent Authorities and Competent Institutions in the territory of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

ARTICLE 16

Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement:

(a) shall communicate to each other any information necessary for the application of this Agreement;

(b) shall lend their good offices and furnish assistance to one another, including the communication to each other of any necessary information, with regard to the determination or payment of any benefit under this Agreement or under the social security laws of either Party as if the matter involved the application of their own legislation;

(c) shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation in so far as these changes affect the application of this Agreement; and

(d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in the Administrative Arrangement made in accordance with Article 17.

2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any Administrative Arrangement made pursuant to Article 17.

3. Unless disclosure is required under the laws of a Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or an Institution of that Party by a Competent Authority or an Institution of the other Party is confidential and shall be used only for purposes of implementing this Agreement and the social security laws of either Party.

4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the Competent Authority or Institution of a Party the obligation:

(a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party; or

(b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Party.

5. In the application of this Agreement, the Competent Authority and the Institutions of a Party may communicate with the Competent Authority and the Institutions of the other Party in the official language of the first Party.

ARTICLE 17

Administrative Arrangement

The Competent Authorities of the Parties shall make whatever Administrative Arrangement is necessary in order to implement this Agreement.

ARTICLE 18

Resolution of difficulties

1. The Competent Authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.

2. The Parties shall consult promptly at the request of either concerning matters which have not been resolved by the Competent Authorities in accordance with paragraph 1.

ARTICLE 19

Review of Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the territory of the Party to which that request was made.

PART V—TRANSITIONAL AND FINAL PROVISIONS

ARTICLE 20

Entry Into Force and Termination

1. This Agreement shall enter into force on the first day of the second month after an exchange of notes by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to this Agreement have been finalised.

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a note through the diplomatic channel indicating the intention of the other Party to terminate this Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who:

(a) at the date of termination, are in receipt of benefits; or

(b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits,

 by virtue of this Agreement.

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

DONE in two copies at Nicosia this twelfth day of May 1992,

in the English and Greek languages.

DAVID SIMMONS I ARISTIDOU

FOR AUSTRALIA FOR THE REPUBLIC OF CYPRUS

[Signatures omitted]

[*Minister’s second reading speech made in—*

*House of Representatives on 3 June 1999*

*Senate on 20 September 1999*]

(105/99)