



# **Social Security (International Agreements) Amendment (Republic of Austria) Regulation 2016**

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I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 05 May 2016

Peter Cosgrove  
Governor-General

By His Excellency's Command

Christian Porter  
Minister for Social Services

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## 1 Name

This is the *Social Security (International Agreements) Amendment (Republic of Austria) Regulation 2016*.

## 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 to 5 and anything in this instrument not elsewhere covered by this table	The day after this instrument is registered.	10 May 2016
2. Schedule 1	A single day to be fixed by the Minister by notifiable instrument.	1 March 2017 (F2017N00013)

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

## 3 Authority

This instrument is made under subsection 8(1) and section 9 of the *Social Security (International Agreements) Act 1999*.

## 4 Repeal of this instrument

This instrument is repealed on the day after Schedule 1 commences.

## 5 Schedules

Legislation that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Social Security (International Agreements) Act 1999*

#### 1 Schedule 10

Repeal the Schedule, substitute:

### **Schedule 10—Austria**

Note: See sections 5 and 8.

**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,

Considering it appropriate to review and replace the Social Security Agreement between Australia and Austria done on 1 April 1992, the Protocol to the Agreement between Australia and the Republic of Austria on Social Security done on 26 June 2001 and the Second Protocol to the Agreement between Australia and the Republic of Austria on Social Security signed on 17 February 2010,

And

Resolved to co-operate in the field of social security;

Have agreed as follows:

#### **PART I – GENERAL PROVISIONS**

##### **Article 1 Interpretation**

1. In this Agreement:

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- (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)(i) of Article 2 except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the laws specified in subparagraph 1(a)(ii) 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 of the department responsible for the legislation in subparagraph 1(a)(i) of Article 2 except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner; 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 a Party, the institution or agency responsible for the administration of all or part of that Party’s legislation;
- (e) “**competent institution**” means, in relation to a Party, the institution competent under the legislation of that Party;
- (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 11 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 but for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee;
- (i) “**carer payment**” means a carer payment payable to a person who is caring for that person’s partner who is in receipt of an Australian disability support pension or age pension;
- (j) “**widowed person**” means, in relation to Australia, a person who stops being a partnered person because of the death of the person’s partner 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:
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- (m) “**Australia**” means Australia as defined in the legislation of Australia;
- (n) “**Austria**” means the Republic of Austria;
- (o) “**Government**” for the purposes of Article 9 includes, in relation to Australia, a political subdivision or local authority of Australia;
- (p) “**Party**” means Australia or Austria as the context requires.

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:
    - (i) the Acts forming the social security law insofar as the law provides for, applies to, or affects the following benefits:
      - (A) age pension;
      - (B) disability support pension;
      - (C) carer payment;
      - (D) benefits payable to widowed persons; and
      - (E) double orphan pension.
    - (ii) with regard to Part II only, the law concerning the superannuation guarantee: the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992 and the Superannuation Guarantee (Administration) Regulations provided that this Agreement shall not extend the application of that law; and
  - (b) in relation to Austria:
    - (i) the legislation concerning pension insurance with the exception of the insurance for notaries; and
    - (ii) with regard to Part II only, the legislation concerning sickness insurance and accident insurance.
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, the legislation of Australia shall not include treaties or other international agreements on social security that may be concluded between Australia and a third Party.



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**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, the following persons shall, in the application of the legislation of one Party, receive equal treatment with the nationals of this other Party regarding eligibility for and payment of benefits:

- (a) nationals of the other Party;
- (b) refugees, ordinarily resident in the territory of one Party;
- (c) stateless persons, ordinarily resident in the territory of one 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. In relation to Austria paragraph 1 shall also apply to any person covered by the principle of free movement under EU-law.

4. Paragraph 1 shall not apply to the provisions of the Austrian legislation concerning the apportionment of insurance burdens resulting from agreements with third States.

5. 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 one Party which requires that entitlement to or the payment of benefits is dependent on residence or presence in the territory of that Party shall not be applicable to persons, who reside or stay in the territory of the other 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 not apply to any additional amount, increase or supplement such as rent assistance which is intended to assist Australian pensioners with certain additional living costs and which is not payable indefinitely outside Australia. Such amounts shall be payable outside the territory of Australia only to the extent provided by the legislation of Australia.

(b) Paragraph 1 shall not apply to a claimant for a carer payment who has never been an Australian resident.

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

(e) Where a double orphan pension would be payable to a person under the legislation of Australia, in respect of a young person whose sole surviving parent died while that young person was an Australian resident, if that person and that young person were residents of Australia, that pension shall, subject to the provisions of the legislation of Australia, be payable while that person and that young person are residents of Austria.

5. As regards the Austrian legislation, paragraph 1 shall not apply to the compensatory supplement (Ausgleichszulage).

6. Australian legislation which provides for, applies to or affects disability support pension for a person who is not severely disabled shall not be affected by paragraph 4(d).

7. Notwithstanding anything else in this Article, Australian disability support pension shall not be payable for longer than the period specified in the social security legislation of Australia to a person who is not severely disabled while that person is outside Australia.

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**PART II – PROVISIONS RELATING TO APPLICABLE LEGISLATION****Provisions relating to applicable legislation****Article 6  
General provisions**

1. Subject to Articles 7 to 10 a person who is employed or self-employed in the territory of one Party shall be subject only to the legislation of that Party with regard to that activity. In relation to employment in Austria, this shall also apply if the employer's place of business is in the territory of the other Party.
2. In relation to Australia, a reference in this Part to an employee also includes their employer, in respect of work of the employee or remuneration paid for that work.

**Article 7  
Special Provisions**

1. An employed person who, usually is employed by an employer with an office in the territory of one of the Parties, is posted by this employer to the territory of the other Party to work on its account or for a related entity, shall be subject only to the legislation of the former Party as if the person continued to be employed in the territory of the former Party, on the condition that the person's work does not exceed five years.
2. For the purposes of paragraph 1 an entity is a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

**Article 8  
Members of Diplomatic Missions and Consular Posts**

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

**Article 9  
Government Officials**

Government officials and equivalent personnel who are sent by the government of a Party to the territory of the other Party are subject only to the legislation of the first mentioned Party. These persons are, for this purpose, considered to be resident in the territory of this Party, even if they are located in the territory of the other Party.

**Article 10  
Exceptions**

In the interest of certain persons or certain categories of persons covered by this Part, the competent authorities can, by agreement in writing, specify exceptions to the provisions of Articles 6 to 9.

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**PART III – PROVISIONS CONCERNING AUSTRALIAN BENEFITS**

**Article 11**  
**Totalisation for Australian benefits**

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 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 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.

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**Article 12**  
**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 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. The provisions in paragraphs 4 and 5 shall continue to apply for 26 weeks where a person temporarily leaves Australia.
7. Where a member of a couple 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.
8. 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.

9. In paragraphs 1 and 4 of this Article references to Australian benefits do not include double orphan pension.

## **PART IV – PROVISIONS CONCERNING AUSTRIAN BENEFITS**

### **Article 13 Totalisation for Austrian benefits**

1. Where the Austrian legislation makes the acquisition, maintenance or recovery of entitlement to benefits conditional upon the completion of periods of insurance in Austria, the institution which applies that legislation shall take account, as far as necessary, of periods of Australian working life residence as if they were periods of insurance in Austria.
2. Where the Austrian legislation makes the award of certain benefits conditional upon the completion of periods of insurance in Austria in an occupation covered by special schemes or in a specified occupation or employment, then from the periods of Australian working life residence only those periods completed under a corresponding scheme, or, failing that, in the same occupation or, where appropriate, in the same employment, shall be taken into account for the award of such benefits.
3. Where the Austrian legislation provides that the period of payment of a pension shall prolong the reference period during which periods of insurance in Austria must be completed, periods during which a corresponding benefit has been awarded under the Australian legislation shall prolong the aforesaid reference period.
4. Periods of Australian working life residence, during which the person concerned was employed or self-employed, shall be treated as periods of contributions of obligatory insurance due to gainful activity.
5. The periods of coverage of a person completed in a third country, with which Austria has a Social Security Agreement of the same kind, shall also be taken into account for the purpose of acquiring entitlement to a benefit under Austrian legislation.

### **Article 14 Calculation of Austrian Benefits**

1. Where entitlement to a benefit exists under the Austrian legislation without the application of Article 13, the competent Austrian institution shall determine the amount of the benefit in accordance with the Austrian legislation on the basis of periods of insurance in Austria exclusively.

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2. Where entitlement to a benefit exists under Austrian legislation only by totalising periods under Article 13, the competent institution for Austria shall determine the amount of the benefit in accordance with Regulation (EC) No. 883/2004, with periods of Australian working life residence, to be deemed periods of insurance in another Member State of the European Union.
  3. As an exception from paragraph 2 of this Article, child raising periods shall be taken into account for the determination of the benefit only in accordance with the Austrian legislation.
  4. Where the periods of insurance in Austria to be taken into account under the Austrian legislation for the calculation of the benefit are in aggregate less than twelve months, and no entitlement to a benefit has been established under the Austrian legislation exclusively on the basis of these periods, no benefit under that legislation shall be paid.

## **PART V – MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

### **Article 15 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. The date on which a claim for a benefit under the legislation of a Party is lodged with the competent institution of that Party shall be considered to be the date on which a claim for the corresponding benefit under the legislation of the other Party was lodged if:
  - (a) the applicant provides information at the time of the original 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
  - (b) a claim for the corresponding benefit is received by the competent institution of the other Party within 12 months of the lodgement of the original claim.
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 16 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 17 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 18 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.



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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 of 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 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.
  5. 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.
  6. 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 19** **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 20** **Data Protection**

1. Insofar as personal data is communicated pursuant to this Agreement and is subject to domestic laws of the Parties, the following provisions shall apply, taking into consideration other binding provisions of the Parties:
  - (a) For the implementation of this Agreement and the legislation referring thereto personal data may be communicated to the competent bodies of the receiving Party. The receiving body shall not use the data for any purpose other than for that which it was originally communicated. Onward transmission of personal data within the territory of the receiving Party to other bodies is admissible in conformity with the domestic law of the receiving Party insofar as it serves social security purposes or the purposes of the legislation specified in subparagraph 1(a)(ii) of Article 2 including related court procedures. Even in the case of disclosure of information in public court proceedings or in judicial decisions personal data shall be treated as confidential unless its disclosure is necessary to safeguard overriding the legitimate interests of another person or overriding substantial public interests.

(b) Any personal data communicated in whatsoever form between the responsible authorities, institutions or any other bodies concerned pursuant to this Agreement or to any arrangement implementing this Agreement shall be treated as confidential in the same manner as like information obtained under the domestic law of the receiving Party. These obligations shall apply to all persons fulfilling tasks under this Agreement and to persons otherwise bound by the obligation of confidentiality relating to personal data.

(c) In specific cases the receiving body shall give information upon request of the communicating body about both the use of the personal data received and the results which had been achieved through the use of this personal data.

(d) The communicating body shall ensure that personal data communicated pursuant to this Agreement is accurate and up-to-date. Before initiating any communication of personal data the communicating body shall examine whether or not the communication is necessary and proportionate with regard to the purpose of the communication in question. This is to be done with due consideration to prohibitions on communication existing in the relevant domestic law. In the case of communication of inaccurate data or data which was not permitted to have been communicated under the domestic law of the communicating Party the receiving body must be informed thereof without undue delay. The latter shall carry out the necessary deletion or correction of the data immediately. If the receiving body has reason to suppose that communicated data might be inaccurate or should be deleted, this body shall immediately inform the communicating body thereof without undue delay.

(e) A person whose personal data has been communicated pursuant to the Agreement, who proves their identity in an appropriate manner, shall, upon request of that person, be provided by the body responsible for processing with information about the data relating to them which has been communicated or processed, the origin of the data as far as possible, the recipients or categories of recipients of communications, the intended purpose of the use of data and the legal basis of the communication of the data in a generally understandable form. This information shall be given without undue delay and, in principle, free of charge. Moreover the person concerned shall have the right to have incomplete or inaccurate data corrected and unlawfully processed data deleted. Further procedural details relating to the enforcement of these rights are subject to domestic law.

(f) The Parties shall provide every data subject whose rights to information, correction and deletion have been violated with the right to have the matter decided by an independent authority. Furthermore, the Parties shall ensure that any data subject who has suffered damage as a result of an unlawful processing of data is entitled to receive compensation for the damage suffered from the body responsible for processing the data in accordance with the respective Party's domestic law.

(g) Personal data communicated shall be deleted, if found to be inaccurate, or unlawfully obtained or communicated, or if lawfully communicated data are to be deleted at a later date pursuant to the domestic law of the communicating Party, or if data is no longer needed for the purpose for which it was communicated and if there is no reason to suppose that the deletion could affect interests deserving protection of the person in the field of social security or the legislation specified in subparagraph 1(a)(ii) of Article 2 of the Agreement.

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(h) Both the communicating body and the receiving body shall record the reason, contents and date of any communication or receipt of personal data as well as the communicating and receiving body. Data communicated online shall be logged using automated processes. The records and logs shall be stored for at least three years and may only be used for the purpose of monitoring compliance with the applicable provisions on data protection.

(i) Both the communicating body and the receiving body shall effectively protect communicated personal data against accidental or unauthorised destruction, accidental loss, unauthorised access, unauthorised or accidental modification and unauthorised disclosure.

2. The provisions of paragraph (1) of this Article shall apply accordingly to trade and business secrets.

### **Article 21 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.

3. Paragraph 2 does not apply in relation to the application of Part II of this Agreement.

## **PART VI – TRANSITIONAL AND FINAL PROVISIONS**

### **Article 22 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.

4. Subject to this Agreement, when this Agreement comes into force, the previous Agreement shall terminate in accordance with Article 24 and persons who were receiving benefits by virtue of that Agreement shall receive those benefits by virtue of this Agreement.

5. Where, on the date on which this Agreement enters into force, a person:

- (a) is in receipt of a benefit by virtue of the previous Agreement; or
- (b) is qualified to receive a benefit referred to in subparagraph (a) and,

where a claim for that benefit is required, has claimed that benefit,

no provision of this Agreement shall affect that person's qualification to receive that benefit and the rate of that benefit.

### **Article 23 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 24 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 calendar months following the month in 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 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.

4. The entry into force of this Agreement shall terminate:

- a) the Agreement between Australia and the Republic of Austria on Social Security done at Canberra on the first day of April 1992, as amended by the Protocol done at Vienna on the twenty-sixth day of June 2001 and the Second Protocol done at Vienna on the seventeenth day of February 2010;
- b) the Administrative Arrangement for the application of the Agreement between Australia and the Republic of Austria on Social Security signed at Canberra on the first day of April 1992 and the Supplementary Administrative Arrangement for the application of the Agreement between Australia and the Republic of Austria on Social Security signed at Canberra on the fifth day of October 2011.

5. In the event that this Agreement is terminated, Part II of this Agreement shall continue to have effect in relation to all persons who, immediately before the date of termination, are subject only to the legislation of one Party by virtue of that Part of this Agreement, provided that the person concerned continues to satisfy the criteria of that Part.

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

DONE in two copies at Canberra this twelfth day of August 2015 in the English and German languages, each text being equally authoritative.

For Australia:

For the Republic of Austria:

The Hon. Scott John Morrison MP,  
Minister for Social Services

Helmut Böck  
Ambassador Extraordinary and  
Plenipotentiary of the Republic of Austria to  
Australia