



# **Social Security (International Agreements) Act 1999 Amendment Regulations 2001 (No. 1)<sup>1</sup>**

**Statutory Rules 2001 No. 215<sup>2</sup>**

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I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Social Security (International Agreements) Act 1999*.

Dated 16 August 2001

PETER HOLLINGWORTH  
Governor-General

By His Excellency's Command

AMANDA VANSTONE  
Minister for Family and Community Services

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**1 Name of Regulations**

These Regulations are the *Social Security (International Agreements) Act 1999 Amendment Regulations 2001 (No. 1)*.

**2 Commencement**

These Regulations commence on 1 January 2002.

**3 Amendment of *Social Security (International Agreements) Act 1999***

Schedule 1 amends the *Social Security (International Agreements) Act 1999*.

**Schedule 1 Amendments**

(regulation 3)

**[1] Schedule 4**

*substitute*

**Schedule 4 — Canada**

Note: See section 5.

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,

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NOTING the Reciprocal Agreement on Social Security signed on the fourth day of July 1988, as amended by a Protocol signed the eleventh day of October 1990, and

ACKNOWLEDGING the need to reflect, by means of a consolidated document, the changes which have taken place in their respective legislation since that Agreement and Protocol were signed,

HAVE AGREED AS FOLLOWS:

## **PART 1 — INTERPRETATION AND SCOPE**

### **ARTICLE 1**

#### *Interpretation*

1. In this Agreement:

**“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;

**“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 9 as a Canadian creditable period;

**“carer payment”** means a carer payment payable under the legislation of Australia to the partner of a person in receipt of an Australian pension;

**“competent authority”** means, in relation to Australia, the Secretary to the Department of Family and Community Services and, in relation to Canada, the Minister of Human Resources Development;

**“competent institution”** means, in relation to Australia, the institution responsible for the administration of the legislation of Australia and, in relation to Canada, the competent authority;

**“disability support pension”** means a disability support pension payable under the legislation of Australia to a person who is severely disabled;

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

**“partner”** when used in relation to the grant, payment or calculation of rate of an Australian benefit, means partner as defined in the legislation of Australia.

**“period of Australian working life residence”** means, in relation to a person, 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;

**“previous agreement”** means the Reciprocal Agreement on Social Security between the Government of Canada and the Government of Australia signed on the fourth day of July 1988, as amended by a Protocol signed on the eleventh day of October 1990;

**“social security laws”** means:

- (i) in relation to Australia, the Acts forming the social security law, including regulations made thereunder, as amended; and
- (ii) in relation to Canada, the laws specified in subparagraph 1 (b) of Article 2;

**“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.

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.

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## 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 Acts and regulations forming the social security law to the extent they provide for and apply to:
    - (i) age pensions;
    - (ii) disability support pensions;
    - (iii) carer payments;
    - (iv) pensions payable to widowed persons; and
    - (v) additional child amount payable to persons in receipt of the above benefits; 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 within 60 days of the date on which those laws receive Royal Assent.
4. Where, under the legislation of Australia, a new category of beneficiaries has arisen as described in paragraph 3, no qualification for benefits in that category shall exist until the expiration of the period set out in that paragraph.

### 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 pursuant to the *Canada Pension Plan*

and, where applicable, to any partner, spouse, common-law partner, 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 Statethat person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

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2. Paragraph 1 shall not apply to a claimant for a benefit who has never been an Australian resident.

## ARTICLE 6

### *Totalisation for Australian Benefits*

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, for a benefit under the legislation of Australia; and
  - (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 6 for that person,
- and has accumulated a Canadian creditable period, then for the purposes of a claim for that Australian benefit, that Canadian creditable 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. In the case of a claim by a person for a disability support pension or pension payable to a widowed person, 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 widowed person, that person shall be deemed to have accumulated a Canadian creditable period for any period for which the person's partner accumulated a creditable period under the *Canada Pension Plan* but any period during which the person and the partner 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

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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 Australian working life residence 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 to be taken into account for the purposes of subparagraph 1(b) shall be, for a person who is residing outside Australia, a minimum period of Australian working life residence of one year, of which at least 6 months must be continuous and for an Australian resident, no minimum shall apply.

## ARTICLE 7

### *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 social security laws of Australia but:
- (a) disregarding in the calculation of his or her income:
- (i) the guaranteed income supplement under the *Old Age Security Act*;
- (ii) the portion of the allowance under that Act equivalent to the guaranteed income supplement; and



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- (iii) other Canadian federal, provincial or territorial welfare payments of a similar character which are income or means tested, as mutually agreed by the competent authorities; and
    - (b) by assessing as income of that person and, where applicable that person's partner, only a proportion of any other benefit received by that person and, where applicable that person's partner, under the legislation of Canada calculated by multiplying the number of whole months, plus one, accumulated by that person in a period of Australian working life residence, but not exceeding 300, by the amount of that 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 subparagraph 1(b) 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 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 Australian legislation but disregarding in that calculation any Canadian benefit to which the person or the person's partner is entitled;
    - (b) deducting that Canadian benefit 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 Australian legislation, using as the person's income the amount calculated under subparagraph (a).
  - 4. Where the rate of a benefit calculated in accordance with paragraph 3 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.

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5. For the purposes of paragraph 4, a comparison of the rates of a benefit determined in accordance with paragraphs 1, 2 and 3 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 Australian working life residence accumulated by the person at the date as at which the comparison is made.
6. For the purposes of paragraph 3, where one or the other, or both, of a person and his or her partner are entitled to receive a Canadian benefit, the total of the Canadian benefits payable to that person and his or her partner shall be apportioned equally between them and disregarded in the calculation 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.

#### ARTICLE 8

##### *Recovery of Debts*

1. 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 institution 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 institution 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

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- (e) the competent institution 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.
2. In paragraph 1, “benefit” means, in relation to Australia, a pension, benefit or allowance that is payable under the social security laws of Australia.

### **PART III — PROVISIONS RELATING TO CANADIAN BENEFITS**

#### **ARTICLE 9**

##### *Totalisation for Canadian Benefits*

1. Subject to paragraph 3, if a person is not eligible for a benefit on the basis of his or her Canadian creditable periods, eligibility of that person 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 Australian working life residence 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 Australian working life residence 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 Australian working life residence coincide, the period of coincidence shall be taken into account once only as a Canadian creditable period.

#### **ARTICLE 10**

##### *Benefits under the Old Age Security Act*

1. If a person is eligible for a pension or an allowance solely through the application of the totalising provisions of Article 9, the

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competent institution of Canada shall calculate the amount of the pension or allowance payable to that person in conformity with the provisions of the *Old Age Security Act* governing the payment of a partial pension or allowance, exclusively on the basis of the periods of residence in Canada which may be considered under that Act.

2. Paragraph 1 shall also apply to a person outside Canada who would be entitled to the payment of a full pension in Canada but who has not resided in Canada for the minimum period required by the *Old Age Security Act* for entitlement to payment of a pension outside Canada.
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 Australian working life residence, when totalised as provided in Article 9, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for payment of a pension outside Canada; and
  - (b) an allowance and a guaranteed income supplement shall be paid to a person who is outside Canada only to the extent permitted by the *Old Age Security Act*.

#### ARTICLE 11

##### *Benefits under the Canada Pension Plan*

1. If a person is not eligible for a benefit solely on the basis of the periods creditable under the *Canada Pension Plan*, but is eligible for that benefit through the totalising of periods as provided in Article 9, the competent institution 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*.

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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 eligibility to that benefit,
- but in no case shall that fraction exceed the value of one.

#### **PART IV — MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

##### **ARTICLE 12**

##### *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 or 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 authority or competent institution 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 the social security laws of Australia or made to a body established by other means for the purposes of the social security laws of Australia.

##### **ARTICLE 13**

##### *Export of Benefits*

1. Unless otherwise provided in this Agreement, the benefits payable to a person under the legislation of one Party shall also be payable to that person when he or she is in the territory of the other Party.

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2. Where the legislation of a Party provides that a benefit is payable to a person who is outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable when that person is outside the territories of both Parties.
  3. Where qualification for an Australian benefit is subject to limitations as to time, reference to Australia in those limitations shall be read also as references to Canada.
  4. The rights under this Article shall not apply to any rent assistance, pharmaceutical allowance or telephone allowance paid by Australia.
  5. A benefit payable by a Party by virtue of this Agreement or under its legislation shall be paid by that Party without deduction of administrative fees and charges by the government or the corresponding competent authority or competent institution for processing and paying that benefit, whether the person qualifying for the benefit is in the territory of the other Party or in a third State.
  6. If a person is receiving a carer payment under this Agreement, references to Australia in the provisions relating to qualification and payability of carer payment shall also be read as references to Canada.

#### ARTICLE 14

##### *Exchange of Information and Mutual Assistance*

1. The competent authorities and competent institutions shall:
  - (a) notify each other of laws affecting the application of this Agreement that amend, supplement or replace the social security laws of their respective Parties promptly after the former laws are made;
  - (b) unless prohibited by law, 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;

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- (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 15.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the competent authorities and/or competent institutions 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 or competent institution 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 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 administrative practice of that or the other Party.

## ARTICLE 15

### *Administrative Arrangements*

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

## ARTICLE 16

*Language of Communication*

In the application of this Agreement, the competent authority or competent institution of a Party may communicate directly with the other competent authority or competent institution in any official language of that Party.

## ARTICLE 17

*Understandings with a Province of Canada*

1. 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.
2. If the relevant authority of Australia and a province of Canada conclude such an understanding, then any references in the legislation of Australia to a scheduled international agreement with a foreign country shall be read also as references to a scheduled instrument of understanding between Australia and a province of Canada.

## ARTICLE 18

*Resolution of Disputes*

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.



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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 19

##### *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 20

##### *Transitional Provisions*

1. Subject to this Agreement, in determining the eligibility of a person for a benefit payable by virtue of this Agreement:
  - (a) a period as an Australian resident and/or a Canadian creditable period; 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. Subject to paragraphs 4 and 6, 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

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never be earlier than the date on which this Agreement enters into force.

3. Subject to this Agreement, when this Agreement comes into force, the previous agreement shall terminate and persons who were receiving benefits by virtue of that agreement shall receive those benefits by virtue of this Agreement.
4. When a person, due to the operation of paragraph 3 of this Article, receives a carer payment in Australia by virtue of this Agreement, the rate of that carer payment shall be determined according to the legislation of Australia.
5. 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 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.
6. An Australian benefit that is payable only by virtue of the previous agreement to a person who:
  - (a) was an Australian resident on 8 May 1985; and
  - (b) commenced to receive that benefit before 1 January 1996shall be paid, during any absence of that person from Australia that commenced before 1 January 1996, at a rate calculated in accordance with paragraphs 3 and 4 of Article 7 of this Agreement.
7. Where, after the entry into force of this Agreement, a person:
  - (a) applies for a benefit under the legislation of Canada; and
  - (b) would have been eligible for that benefit under the provisions of the previous agreement, with a commencement date determined in accordance with the legislation of Canada which is prior to the date of entry into force of this Agreement,

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the competent institution of Canada shall pay that benefit to that person with effect from that commencement date. This shall also be the case in regard to an application for a benefit which is received prior to the entry into force of this Agreement but on which the competent institution of Canada has not yet taken a decision when this Agreement enters into force.

8. 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 the previous agreement.

## ARTICLE 21

### *Period of Duration and Termination*

1. Subject to paragraph 2, 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.
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.

## ARTICLE 22

### *Entry Into Force*

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.

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

DONE in two copies at Ottawa this 26<sup>th</sup> day of July 2001 in the English and French languages, each text being equally authoritative.

FOR THE GOVERNMENT  
OF AUSTRALIA  
Frances Lisson

FOR THE GOVERNMENT  
OF CANADA  
Paul Migus

**[2] Schedule 7**

*substitute*

**Schedule 7 — Netherlands**

Note: See section 5.

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA  
AND THE GOVERNMENT OF 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,

Resolved to continue the cooperation in the field of social security, and

Wishing to extend and modify the Agreement between Australia and the Kingdom of the Netherlands on Social Security of 4 January 1991 (the 1991 Agreement);

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 under the legislation of that Party but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee and, for the Netherlands, does not include any benefit, payment or entitlement under the Social Security Supplementary Benefits Act (TW);

**“Competent Authority”** means, in relation to Australia: the Secretary to the Commonwealth Department responsible for the legislation specified in subparagraph 1(a)(i) of Article 2 except in relation to the application of Part II, Section A 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 the Netherlands: the Minister for Social Affairs and Employment;

**“Competent Institution”** means, in relation to Australia: the institution which has the task of implementing the applicable Australian legislation and in relation to the Netherlands: the 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 subparagraph 1(a)(i) of Article 2 except in relation to the application of Part II, Section A of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the law specified in subparagraph 1(a)(ii) of Article 2, and, in relation to the Netherlands, the laws, ordinances and administrative regulations

relating to the systems and branches of social security specified in subparagraph 1(b) of Article 2 in relation to the Netherlands;

**“period of insurance”** means a period defined as such in the legislation of the Netherlands;

**“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 10 to be a period in which that person was an Australian resident;

**“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 Kingdom of the Netherlands, the territory of the Kingdom in Europe; and

**“widowed person”**, means in relation to Australia, a de jure widow or widower but does not include one 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.

## 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:
    - i) the Acts forming the social security law, in so far as the law provides for, applies to or affects the following benefits:
      - A) age pensions;
      - B) disability support pension for a person who is severely disabled; and
    - ii) the law concerning the superannuation guarantee (which at the time of signature of this Agreement is contained in

the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Regulations*);

- b) in relation to the Netherlands, its legislation on:
  - i) general old age insurance;
  - ii) invalidity insurance for employees and the self-employed;
  - iii) general survivors' insurance;
  - iv) children's allowances;
  - v) sickness insurance (including employers' liability for payment during sickness);

and for the application of Part II of the Agreement also its legislation on:

- vi) unemployment insurance;

2. Notwithstanding the provisions of subparagraph 1(a), this Agreement shall continue to apply to women who are receiving Australian wife pension and are the wives of persons receiving Australian age pension and it shall also apply to women who are receiving Australian wife pension and are the wives of persons receiving Australian disability support pension for the severely disabled.
3. Notwithstanding the provisions of subparagraph 1(a), the term "benefit" shall include Australian pensions payable to widowed persons and Australian double orphans pensions for the purposes of Article 5.
4. Notwithstanding the provisions of subparagraph 1(a) of this Article, the term "benefit" shall, when the reference is to an Australian benefit, include pensions payable to widowed persons for the purposes of paragraphs 1 and 2 of Article 15.
5. Notwithstanding the provisions of subparagraph 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

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giving effect to any agreement on social security entered into by Australia with other States.

6. This Agreement shall apply to laws that 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.
7. Except as otherwise provided in this Agreement, 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.
8. This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic relations of April 18, 1961, or the Vienna Convention on Consular relations of April 24, 1963.

### 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. The citizens of each of the Parties shall be treated equally in the application of the legislation of Australia and of the Netherlands relating to benefits.
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 relating to benefits which arise by virtue of this Agreement.



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ARTICLE 5*Payment of benefits abroad*

- 1 Benefits payable whether under this Agreement or otherwise shall not be reduced, modified, suspended or withdrawn on account of the recipient, or members of his or her family, residing in the territory of the other Party.
2. Where continuing qualification or payability of a benefit is subject to limitations as to time, then reference to the territory of a Party in those limitations shall be read also as reference to the territory of the other Party.
3. Where continuing qualification or payability of a benefit is subject to a requirement to be, for an Australian benefit, an Australian resident or, for a Netherlands benefit, a resident of the Netherlands and/or also to be present in Australia or the Netherlands respectively, then in regard to those requirements, a reference to an Australian resident shall be read also as a reference to a resident of the Netherlands and vice versa and a reference to being present in Australia shall be read also as being present in the Netherlands and vice versa.
4. 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 that legislation, be payable while that person and that young person are residents of the Netherlands.

## **PART II — PROVISIONS ON COVERAGE**

### **SECTION A**

#### **PROVISIONS RELATING TO THE SUPERANNUATION GUARANTEE LEGISLATION OF AUSTRALIA AND TO NETHERLANDS' LEGISLATION**

##### **ARTICLE 6**

###### *Purpose of Section A*

The purpose of Section A is to ensure that employers and employees who are subject to the legislation of the Netherlands or Australia do not have a double liability under the legislation of the Netherlands and Australia in respect of the same work of an employee.

##### **ARTICLE 7**

###### *Application of Section A*

Section A only applies where:

- a) without the application of Section A an employee and/or the employer of the employee would otherwise be covered by both the legislation of the Netherlands and Australia; or
- b) without the application of paragraphs 2, 3, 5 or 6 of Article 8 an employee from the Netherlands and/or the employer of that employee would otherwise come to be covered by the legislation of Australia and not remain covered by the legislation of the Netherlands.

##### **ARTICLE 8**

###### *Provisions on coverage*

1. Unless otherwise provided in paragraphs 2, 3 or 4, if an employee works in the territory of one Party, the employer of the employee and the employee shall in respect of the work and the remuneration paid for the work be subject only to the legislation of that Party.
2. If an employee:
  - a) is covered by the legislation of one Party ('the first Party'); and

- b) was sent, whether before, on or after the commencement of this Part, by the Government of the first Party to work in the territory of the other Party ('the second Party'); and
  - c) is working in the territory of the second Party in the employment of the Government of the first Party; and
  - d) is not working permanently in the territory of the second Party;
- the employer and employee shall be subject only to the legislation of the first Party in respect of the work and the remuneration paid for the work.

3. If an employee:

- a) is covered by the legislation of one Party ('the first Party'); and
- b) was sent, whether before, on or after the commencement of this Part, by an employer who is subject to the legislation of the first Party to work in the territory of the other Party ('the second Party'); and
- c) is working in the territory of the second Party in the employment of the employer or a related entity of that employer; and
- d) was sent to work in the territory of the second Party and a period of 5 years has not elapsed from that time; and
- e) is not working permanently in the territory of the second Party;

the employer and employee shall be subject only to the legislation of the first Party in respect of the work and the remuneration paid for the work. 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.

- 4. If an employee is working in the employment of an employer on a ship or aircraft in international traffic, the employer and employee shall in respect of the employment and the remuneration paid for that employment be subject only to the legislation of the Party of which the employee is resident.
- 5. For the purposes of the Netherlands' legislation, a person who is subject to the Netherlands' legislation in accordance with the

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provisions of this Article shall be considered to be resident in the territory of the Kingdom of the Netherlands.

6. According to the provisions of this Article the Netherlands' legislation shall be applicable if the employer or employee has applied for a certificate of coverage from the Netherlands' authority within three months after the first day of secondment under paragraphs 2 or 3 and this certificate has been issued to the person concerned.

## ARTICLE 9

### *Exception agreements*

1. The competent authority for Australia and the competent institution for the Netherlands may for the purposes of Section A by agreement in writing:
  - a) extend the period of 5 years referred to in subparagraph 3(d) of Article 8 for any employee; or
  - b) agree that an employee is taken to work in the territory of a particular Party or to work on a ship or aircraft in international traffic under the legislation of a particular Party and is subject only to the legislation of that Party.
2. Any agreement made under paragraph 1 may apply to:
  - a) a class of employees; and/or
  - b) particular work or particular type of work (including work that has not occurred at the time the agreement is made).

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## SECTION B

### PROVISIONS RELATING TO AUSTRALIAN LEGISLATION (OTHER THAN THAT RELATING TO THE SUPERANNUATION GUARANTEE) AND TO NETHERLANDS' LEGISLATION

#### ARTICLE 10

##### *Partner or Children of Seconded Employees Temporary Absence from Australia*

An Australian resident, who is the partner or child of, and who accompanies to the Netherlands, an employee to which Article 8 paragraph 2 or 3 applies, shall not cease to be regarded as an Australian resident because he or she is temporarily in the Netherlands during the whole or part of the time during which that paragraph applies to that employee.

#### ARTICLE 11

##### *Application of Netherlands Legislation to the Partner or Children of Seconded Employees*

1. The partner or child who accompanies to Australia, an employee to whom Article 8 paragraph 2 or 3 applies shall, for any period in which he or she is not working in the territory of Australia, be subject to Netherlands' legislation and be considered to be resident in the territory of the Kingdom of the Netherlands.
2. The partner or child who accompanies to the Netherlands an employee to whom Article 8 paragraph 2 or 3 applies shall not be subject to Netherlands' legislation for any period in which he or she is not working in the territory of the Kingdom of the Netherlands.

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### **PART III PROVISIONS RELATING TO AUSTRALIAN BENEFITS**

#### **ARTICLE 12**

##### *Residence or Presence in the Netherlands or a Third State*

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.

#### **ARTICLE 13**

##### *Partner related Australian benefits*

A person who receives from Australia an Australian wife pension 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 wife pension by virtue of this Agreement.

#### **ARTICLE 14**

##### *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 Australian working life residence equal to or greater than the period identified in paragraph 4 for that person; and
  - c) 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 purpose 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 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 claimed by 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 claimed by an Australian resident there shall be no minimum period of Australian working life residence.

## ARTICLE 15

### *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 but on the basis that the additional child amount rate is nil.

2. When assessing the income of a person who is outside Australia for the purposes of calculating the rate of a benefit whether payable by virtue of this Agreement or otherwise;
  - a) any payment according to the Algemene Bijstandswet to that person under the legislation of the Netherlands shall be disregarded;
  - b) any payment of AOW-toeslag shall be disregarded; and
  - c) if a proportionalised rate of Australian benefit is payable under the legislation of Australia then only a proportion of any other Netherlands' old age 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 Netherlands' benefit and dividing that product by 300.

The calculation described in sub-paragraph c may be expressed as

$$A = \frac{Q}{300} \times [R - \frac{(NP \times Q/300 + I - F)}{T}]$$

where:

- |           |   |   |
|-----------|---|---|
| <b>A</b>  | = | Rate of Australian benefit payable;   |
| <b>Q</b>  | = | Number of months of the period of residence in Australia of the person or 300 whichever is the lower;                                       |
| <b>R</b>  | = | Maximum rate of Australian benefit;   |
| <b>NP</b> | = | Netherlands' benefit excluding AOW toeslag;   |
| <b>I</b>  | = | Income within the meaning of Australian legislation excluding Netherlands' benefit and any payments according to the Algemene Bijstandswet; |
| <b>F</b>  | = | Free area under the Australian income test;   |
| <b>T</b>  | = | the relevant taper under Australian legislation.  |



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3. The provisions in paragraphs 1 and 2 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
  4. Subject to the provisions in paragraphs 5 and 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; and
    - 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).
  5. The provisions in paragraph 4 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
  6. Where a person is, or his or her partner is, or both that person and his or her partner are, in receipt of a Netherlands' benefit or benefits, each of them shall be deemed, for the purpose of paragraph 4 and for the Acts forming the social security law 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.

#### ARTICLE 16

##### *Exclusion of specified Netherlands' payments from the Australian income test*

1. Where a person receives or is entitled to receive a benefit under the social security laws of Australia:
  - a) reimbursement payments for extra medical, nursing and immediately related expenses of a victim of persecution; and

- b) the special allowance covering the extra medical expenses a victim of persecution has, but which are beyond his or her capacity to meet, while maintaining a certain standard of living,

made under the *State Assistance Scheme of the 1940-1945 Victims of Persecution* (WUV), shall not be included as income for the purpose of assessing the rate of that Australian benefit.

2. For the purposes of this Article only, the term *benefit* shall include all social security payments under the social security laws of Australia.

#### **PART IV PROVISIONS RELATING TO THE NETHERLANDS BENEFITS**

##### **ARTICLE 17**

##### *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 after reaching the age of fifteen, resided in the territory of the Kingdom of the Netherlands or during which, while residing in another country the person was gainfully employed in the Kingdom of 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 Kingdom of the Netherlands.

#### ARTICLE 18

##### *Benefits under the invalidity insurance for employees and the self-employed*

1. A person eligible for a benefit according to subparagraph 1(a)(i)(B) of Article 2 and who was employed and/or self employed in the Netherlands during at least one year shall, subject to paragraphs 2 and 3, be entitled to the Netherlands' invalidity insurance for employees or the self-employed.
2. The benefit shall be determined:
  - a) according to the Netherlands' Disability Act (WAO) in any case where the person was employed, at the moment the incapacity for work followed by invalidity occurred; and
  - b) according to the Netherlands' self-employed persons Disability Benefits Act (WAZ) in any case where the person was, in the year prior to the occurrence of the incapacity for work followed by invalidity, lastly a self-employed person.
3. The benefit established according to this Article shall be multiplied by a factor, of which the numerator consists of the total period in months in which the person was employed and/or self-employed in the Netherlands and the denominator consists of the period in months between the age of 15 and the moment the incapacity for work followed by invalidity occurred.

#### ARTICLE 19

##### *Refusal to pay, suspension, withdrawal*

The Competent Institution of the Netherlands may refuse to pay, may suspend or may withdraw a benefit if the applicant or the beneficiary fails to provide prompt and sufficient information necessary for the application or the payment of the benefit, or fails to undergo any examination as required.

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## PART V COMMON PROVISIONS

### ARTICLE 20

#### *Common Provisions for the Calculation of Benefits*

1. Where a Party (the first Party) makes a payment under this Agreement or under its social security laws to a person who resides in the territory of the other Party, the first Party will disregard from the application of any income test it applies any income-tested payment made by the other Party under this Agreement or under the other Party's social security laws to that person.
2. For the purposes of this Article, the Netherlands' invalidity benefits under WAO and WAZ shall be deemed to be income-tested benefits and the Netherlands' rent subsidy shall be deemed to be paid under the Netherlands' social security laws.
3. The principles set out in paragraphs 1 and 2 will continue to apply when a beneficiary moves to reside in a third country as if the beneficiary had not moved to that third country, provided that the relevant benefit is payable in that third country.
4. Where a person residing in a third country lodges a valid claim for a benefit, the principles set out in paragraphs 1 and 2 will be applied as if that person was resident in the territory of the Party where he or she was last resident before moving to that third country provided that the relevant benefit is payable in that third country.

## PART VI MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

### ARTICLE 21

#### *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

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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. 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 respective legislations.

## ARTICLE 22

*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. Where:

- a) a benefit under this Agreement or otherwise is claimed from one of the Parties and, as a result of that claim, a benefit is payable by a Party to a person in respect of a past period and that past period occurred after the entry into force of this 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

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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 4 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 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 23

### *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.

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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 again leaves Australia within a specified period of time.
  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 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 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.
  5. Where a person is in receipt of a benefit or benefits under this Agreement and is in a third country, the Party paying that benefit or those benefits shall continue to pay that benefit or those benefits if that Party has implemented an agreement on social security with that third country which provides for the portability of that benefit or those benefits.

## ARTICLE 24

### *Exchange of Information and Mutual Assistance*

1. The Competent Authorities and Competent 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;



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- 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 25;
  - e) jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.
- 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

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- 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. Notwithstanding any laws or administrative practices of a Party, no information concerning a person which is received by that Party from the other Party shall be transferred or disclosed to any other country or to any organisation within that other country without the prior written consent of that other Party.
6. 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 25

##### *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 26

##### *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 VII TRANSITIONAL AND FINAL PROVISIONS**

#### ARTICLE 27

##### *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 insofar as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.
3. Subject to Article 28 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.
4. Subject to Article 28 and 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 28

### *Transitional Provisions*

1. Upon the entry into force of this Agreement the 1991 Agreement shall terminate and shall be replaced by this Agreement.
2. Any right to benefit acquired in accordance with the 1991 Agreement shall be maintained. For the purposes of this paragraph “any right to benefit acquired” includes any right which a person would have had but for his or her failure to claim timeously where a late claim is allowed.
3. Any rights in course of acquisition under the 1991 Agreement at the date of entry into force of this Agreement shall be settled in accordance with the Agreement in force at the date of entitlement.

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4. Where, from the date of entry into force of this Agreement, any claim to benefit has not been determined and entitlement arises before that date, the claim shall be determined in accordance with the 1991 Agreement and shall be determined afresh in accordance with this Agreement from its date of entry into force if this is more favourable than the rate determined under the 1991 Agreement.
  5. Benefits, other than lump sum payments, shall be payable in accordance with this Agreement in respect of events which happened before the date of its entry into force, except that an accident which occurred or a disease which developed before that date shall not, solely by virtue of this Agreement, be treated as an industrial accident or an industrial disease if it would not have been so treated under any legislation or Agreement having effect at the time of its occurrence or development. For the purpose of determining claims in accordance with this Agreement, account shall be taken, where appropriate, of insurance periods and periods of residence, employment or presence, completed before the date of its entry into force.
  6. Paragraph 5 shall not confer any right to receive payment of benefit for any period before the date of entry into force of this Agreement.
  7. For the purpose of applying the first sentence of paragraph 5:
    - a) any right to benefit acquired by a national in accordance with the 1991 Agreement may, at the request of the national concerned, be determined afresh in accordance with this Agreement with effect from the date of entry into force of this Agreement provided that the request has been made within two years of the date it enters into force and, if applicable, benefit awarded at the higher rate from the latter date;
    - b) where the request for the benefit to be determined afresh is made more than two years after the date of entry into force of this Agreement payment of benefit, and the payment of any arrears, shall be made in accordance with the legislation concerned.

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8. No provision of this Agreement shall diminish any rights or benefits which a person has properly acquired under the legislation of either Party before the date of entry into force of this Agreement.

## ARTICLE 29

### *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 and the Agreement shall enter into force on the first day of the third month following the date of the last notification.
2. Until entry into force of this Agreement, the Kingdom of the Netherlands shall apply subparagraph 1(b) of Article 2 and Article 5 from the first day of the second month following signature and also, for the Kingdom of the Netherlands, subparagraph 1(b) of Article 2 and Article 5 shall have retrospective effect to 1 January 2000.
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 a note from the other through the diplomatic channel giving notice of termination of this Agreement.
4. In the event that this Agreement is terminated in accordance with paragraph 3, this 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; or
  - c) immediately before the date of termination are subject only to the legislation of one Party by virtue of paragraph 2 or 3 of Article 8 of Part II, Section A of the Agreement, provided the employee continues to satisfy the criteria of these paragraphs.

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

DONE in duplicate at The Hague this 2<sup>nd</sup> day of July 2001, in the English language.

FOR THE GOVERNMENT OF  
AUSTRALIA

Peter Hussin

FOR THE GOVERNMENT OF  
THE KINGDOM OF THE  
NETHERLANDS

J F Hoogervorst

**[3] Schedule 10, after the heading**

*insert*

**Part A**

**[4] Schedule 10, after the Agreement between Australia  
and the Republic of Austria on Social Security of  
1 April 1992**

*insert*

**Part B**

**Protocol to the Agreement between Australia and the Republic of  
Austria on Social Security**

Australia and the Republic of Austria

being desirous of amending and supplementing the Agreement on Social Security between them done at Canberra on the first day of April 1992 have agreed as follows:

## **Article I**

1. In this Protocol “Agreement” means the Agreement between Australia and the Republic of Austria on Social Security done on the first day of April 1992 at Canberra.
2. In the application of this Protocol any term defined in the Agreement shall, unless the context otherwise requires, have the same meaning.

## **Article II**

1. (a) In subparagraph 1(c) of Article 1 of the Agreement, the words “the Secretary to the Department of Social Security” shall be deleted and replaced by the words “the Secretary of the department responsible for the legislation in subparagraph 1(a) of Article 2”.
- (b) Subparagraph 1(d) of Article 1 of the Agreement shall be deleted and replaced by the following:
 

“(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;”
- (c) Subparagraph 1(e) of Article 1 of the Agreement shall be deleted and replaced by the following:
 

“(e) “competent institution” means, in relation to a Party, the institution competent under the legislation of that Party;”
- (d) Subparagraph 1(i) of Article 1 of the Agreement shall be deleted and replaced by the following:
 

“(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;”
- (e) Subparagraph 1(j) of Article 1 of the Agreement shall be deleted and replaced by the following:
 

“(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;”

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

“(a) in relation to Australia, the Acts and regulations forming the social security law to the extent they provide for, apply to, or affect:

    - (i) age pensions,
    - (ii) disability support pensions,
    - (iii) wife pensions,
    - (iv) carer payments,
    - (v) pensions payable to widowed persons, and
    - (vi) double orphan pensions; and”
  3. Paragraph 3 of Article 2 of the Agreement shall be deleted and replaced by the following:

“(3) 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.”
  4. In subparagraph 4(b) of Article 5 of the Agreement the words “carer pension” and the words “rental allowance” shall be deleted and replaced by the words “carer payment” and the words “rent assistance” respectively.
  5. In paragraph 4 of Article 5 of the Agreement the following new subparagraph (e) shall be inserted:

“(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.”



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6. In Article 5 of the Agreement the following new paragraph (6) and paragraph (7) shall be inserted:  
“(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 more than 26 weeks to a person who is not severely disabled while that person is outside Australia.”
  7. In paragraph 4 of Article 6 of the Agreement the words “minimum period of residence in Australia” shall be deleted and replaced by the words “minimum period of Australian working life residence”.
  8. In paragraph 6 of Article 7 of the Agreement the words “married person” shall be deleted and replaced by the words “member of a couple”.
  9. In Article 7 of the Agreement the following new paragraph (8) shall be inserted:  
“(8) In paragraphs 1 and 4 of this Article references to Australian benefits do not include double orphan pension.”
  10. Article 8 shall be deleted and replaced by the following:  

“Article 8

A person who receives an Australian wife pension 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 wife pension by virtue of this Agreement.”

11. Article 9 of the Agreement shall be deleted and replaced by the following:

“Article 9

(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.”

12. Article 10 of the Agreement shall be deleted and replaced by the following:

“Article 10

“(1) Where entitlement to a benefit exists under the Austrian legislation without the application of Article 9, 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 the Austrian legislation only with the application of Article 9, 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 and taking into account the following provisions:

(a) Benefits or parts of benefits the amount of which does not depend on the duration of periods of insurance in Austria shall be calculated in proportion to the ratio of the duration of the periods of insurance in Austria to be taken into account for the calculation under the Austrian legislation and the period of 30 years, but shall not exceed the full amount.

(b) Where periods after the contingency arises are to be taken into account for the calculation of invalidity or survivors' benefits, such periods shall be taken into account only in proportion to the ratio of the duration of the periods of insurance in Austria to be taken into account for the calculation under the Austrian legislation and two-thirds of the number of full calendar months between the date on which the person concerned reached the age of 16 years and the date on which the contingency occurred, but shall not exceed the full period.

(c) Subparagraph (a) shall not apply:

- (i) to benefits resulting from supplementary insurance; or
- (ii) to means-tested benefits or parts of benefits designed to ensure a minimum income.

(3) 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.”

13. Articles 11, 12 and 13 of the Agreement shall be deleted.

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### **Article III**

1. Unless otherwise provided in this Article, this Protocol shall enter into force on the first day of the third month following the month in which the last of the 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.
2. Paragraph 7 of Article 5 of the Agreement as amended by this Protocol shall not apply to the payability of an Australian disability support pension payable to a person in Austria on the day before the date of entry into force of this Protocol.
3. Paragraph 1 of Article 10 of the Agreement as amended by this Protocol, shall have effect from 1 January 1994.
4. Paragraph 2 of Article 10 of the Agreement as amended by this Protocol, shall have effect from 1 January 1997.

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

DONE in two copies at Vienna this twenty-sixth day of June 2001 in the English and German languages, each text being equally authoritative.

For Australia:  
Max Hughes

For the Republic of Austria:  
Christian Prosl

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#### **Notes**

1. These Regulations amend Act No. 173, 1999, as amended by Act Nos. 45, 94 and 138, 2000; Statutory Rules 2000 Nos. 104, 105 and 165.
2. Notified in the *Commonwealth of Australia Gazette* on 17 August 2001.