



**MINISTRY OF SOCIAL
DEVELOPMENT**

TE MANATŪ WHAKAHIATO ORA

09 JUL 2021

Tēnā koe

On 11 June 2021, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982, the following information:

- *All the briefing notes and reports provided to the Minister of Social Development in 2015, 2016 and 2017 in regards the changes made to the (Social Welfare) Reciprocity with Australia order 2017 that came into effect on 1 July 2017. This includes any submissions invited and provided by non-government agencies and governmental ones.*

On 16 June 2021, the Ministry contacted you, and your request was refined to the following:

- *Any reports to the Minister and Cabinet Papers and sub-committees of Cabinet in 2015, 2016 and 2017 relating to the changes to the (Social Welfare) Reciprocity agreement with Australia that came into effect on 1 July 2017.*

The following documents were identified to be within the scope of your request, and are enclosed:

1. Report - *Proposed Amendment to the Social Security Agreement with Australia*, dated 28 November 2014.
2. Report - *Proposed Amendments to the Australia-New Zealand Social Security Agreement*, dated 1 September 2015.
3. Report - *Briefing for the Minister of Foreign Affairs on the Australian Social Security Agreement*, dated 11 September 2015.
4. Report - *Revised Social Security Agreement with Australia: Approval for Signature*, dated 6 October 2016.
This report also contains a copy of the Cabinet paper *Revised Social Security Agreement with Australia: Approval for Signature* that was considered by the Cabinet Social Policy Committee.
5. *Bilateral Treaty Waiver: Updated Social Security Agreement with Australia*, dated 7 October 2016.
This includes a copy of the revised social security agreement between New Zealand and Australia (the Australian Agreement).
6. Aide mémoire - *Amendments to the Social Security Agreement between New Zealand and Australia: Approval for Signature and Preparation of the Order in Council*, dated 4 November 2016
7. Cabinet Paper - *CAB-16-MIN-0149 Revised Social Security Agreement*, dated 10 November 2016.
8. Report - *Social Security Agreement between New Zealand and Australia: Approval for the Order in Council*, dated 21 April 2017.
This report includes a copy of the Order in Council which brings the 2017 Australian Agreement into force in law.

9. Aide mémoire – *Social Security Agreement between New Zealand and Australia: Approval for the Order in Council*, dated 28 April 2017.
10. Minute of Decision - *LEG-17-MIN-0045 Revised Social Security Agreement with Australia: Approval for the Social Welfare (Reciprocity with Australia) Order 2017*, dated 4 May 2017.

Some information within the documents has been withheld under 6(a) of the Act, as making available the information would likely prejudice the international relations of the Government of New Zealand.

Some information within the documents has been withheld under 6(b) of the Act, as making available the information would likely prejudice the entrusting of information to the Government of New Zealand on a basis of confidence by an international entity.

The names and information regarding some individuals are withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

Some of the reports provided to you mention that the Privacy Commissioner would have been required to complete a report to the Minister for Social Development and the Minister of Justice on the Australian Agreement's compliance with the New Zealand Privacy Act. However, this report was not required because:

- the 2017 Australian Agreement made no changes to the information sharing provisions that were in specified in the 2001 Australian Agreement; and
- the adequacy of the information sharing provisions in the 2001 Australian Agreement had already been considered in the earlier report by the Privacy Commissioner. This earlier report can be accessed at the following link:
www.privacy.org.nz/assets/DOCUMENTS/INFO-SHARING/Data-matching-Inform/svA144286.192A-report-to-Ministers-Mutual-Assistance-Australia-20020418.doc.

Please note that although, some reports refer to the 2001 Agreement (the date the Agreement was signed) and others to the 2002 Agreement (the date it was introduced in law), they are the same Agreement. The same issue occurs with the 2016/2017 Agreement.

The document *The Regulatory Impact Statement for the Revised Social Security Agreement with Australia* is also in scope, however can be accessed through the link:
www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/index.html.

Therefore, it has not been enclosed in this response, and is refused under section 18(d) of the Act on the basis that the information requested is publicly available.

In your earlier request, you asked for any submissions invited and provided by non-government agencies and governmental ones, therefore I have provided you with some information on this as well. The opportunity for non-government submissions normally occurs during the Select Committee process. Social Security Agreements are bilateral treaties and may be referred to a Select Committee to examine after they pass their first reading in the House. This was the case for the 2001 Australian

Agreement which proposed significant changes to the previous 1994 Australian Agreement. At this time, non-government agencies had the opportunity to provide oral and written submissions on the provisions in the 2001 Australian Agreement.

The 2017 Australian Agreement was not referred to a Select Committee. The Minister of Foreign Affairs agreed that the 2017 Australian Agreement was not a "major bilateral treaty of particular significance" because it made only minor changes to the 2001 Australian Agreement which had been examined by a Select Committee.

Broader consultation was not considered as the changes in the 2017 Australian Agreement did not represent a change to the principles espoused by the Prime Ministers of New Zealand and Australia in 2001. It is also a longstanding practice that government-to-government negotiations on Social Security Agreements are made in confidence, so consultation with third parties is not a normal part of the negotiation process.

The Treasury and the Ministry of Foreign Affairs and Trade were consulted during the course of the introduction of the 2017 Australian Agreement, and their feedback is incorporated in the final drafts of the Cabinet papers.

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter and attachments on the Ministry of Social Development's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with this response, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Ngā mihi nui



Julia Bergman
General Manager
Disability, Seniors and International Policy

report



MINISTRY OF SOCIAL
DEVELOPMENT
TE MANATŪ WHAKAHIAITO ORA

Date: 28 November 2014

Security
Level:

IN CONFIDENCE

To: Hon Anne Tolley, Minister for Social Development

Proposed amendment to the Social Security Agreement with Australia

Purpose of the report

- 1 The purpose of this report is to seek your view on whether we should increase the age at which New Zealand Superannuation is payable under the Agreement on Social Security between the Government of New Zealand and the Government of Australia (the Agreement), given that Australia is increasing the age of eligibility for the Australian Age Pension.

Recommended actions

It is recommended that you:

- 1 **note** that Australia is increasing the age of eligibility for the Australian Age Pension from 65 to 67 years between 2017 and 2023, but the age of eligibility for New Zealand Superannuation will remain at 65 years
AT ☒ Yes / No
- 2 **note** that a similar issue occurred under the 1995 Australian Agreement where the age of eligibility for Australian Age Pension for women increased from 60 to 65 between 1994 and 2014. Around the same time, the age of eligibility for New Zealand Superannuation for both men and women increased from 60 to 65 between 1991 and 2001
AT ☒ Yes / No
- 3 **note** that we addressed the differing ages of eligibility in the 1995 Agreement by limiting the age of eligibility to the later age required either under the domestic legislation of New Zealand or of Australia
AT ☒ Yes / No
- 4 **note** that, under the Agreement, residence in Australia is treated as residence in New Zealand to help people meet the residence requirements for New Zealand Superannuation
AT ☒ Yes / No
- 5 **note** that, to qualify for New Zealand Superannuation payable in Australia under the Agreement, a person residing in Australia needs at least one year of New Zealand residence and presence which they can combine with Australian residence and presence to meet the residence criteria for New Zealand Superannuation
AT ☒ Yes / No

- 6 **note** that a person is able to qualify for New Zealand Superannuation payable in **New Zealand** under the Agreement if that person is present in New Zealand on the date of application for New Zealand Superannuation and has the intention of remaining in New Zealand for at least one year or was present in New Zealand for six months prior to the date of application
AT ☒ Yes / No
- 7 **note** that, unless a change to the age of eligibility for New Zealand Superannuation payable under the Agreement is made:
7.1 there may be an incentive for people who are under the age of eligibility for the Australian Age Pension to move from Australia to New Zealand to receive New Zealand Superannuation from age 65
AT ☒ Yes / No
7.2 New Zealand may be required to pay New Zealand Superannuation to people residing in Australia who do not meet the age of eligibility to Australian Age Pension.
AT ☒ Yes / No
- 8 **note** that not changing the age of eligibility for New Zealand Superannuation payable under the Agreement will create a fiscal risk but, as it has been difficult to quantify that risk with accuracy, we have provided you with a range of potential indicative costs
AT ☒ Yes / No
- 9 **note** that the combined indicative numbers and annual costs for New Zealand and Australian residents accessing New Zealand Superannuation at age 65 and 66 would range from 9,300 to 16,500 people with an associated cost of between \$46 and \$80 million per year
AT ☒ Yes / No
- 10 **note** that the Treasury, the Australian and New Zealand Productivity Commissions and the Retirement Policy Research Centre of the Auckland University have raised concerns about the potential fiscal risk for New Zealand if the Agreement is not changed
AT ☒ Yes / No
- 11 **note** that there are two options:
11.1 amend the Agreement, so that, where a person has to use the Agreement to qualify for New Zealand Superannuation, they will only be eligible for New Zealand Superannuation if they meet the age of eligibility to Australian Age Pension (this is our recommended option)
AT ☒ Yes / No
11.2 retain the age of eligibility to New Zealand Superannuation at 65 years for people who need to use the Agreement to qualify for New Zealand Superannuation.
AT ☒ Yes / No
- 12 **note** that our recommended option is consistent with the original policy intent of the Agreement where a New Zealander living in Australia is only able to receive New Zealand Superannuation at a rate comparable to the amount of Australian Age Pension that a lifelong Australian would receive
AT ☒ Yes / No

- 13 **note** that our recommended option would minimise the financial risk as only residents in New Zealand who meet the residence requirements in our domestic legislation would be entitled to New Zealand Superannuation from age 65

AT ☒ Yes / No

- 14 **note** that, before the amended Agreement is signed, the Privacy Commissioner is required to report to you and the Minister of Justice on whether the Agreement complies with the privacy principles set out in the Privacy Act 1993 and whether there is adequate privacy protection in Australia

AT ☒ Yes / No

- 15 **note** that, if you agree to our recommended option, this option will be considered by Cabinet along with the other proposed amendments to the Agreement

AT ☒ Yes / No

- 16 **note** that, before the amended Agreement is signed, the amendments will also need to be considered by the Social Services Select Committee

AT ☒ Yes / No

- 17 **agree** that, in principle and subject to Cabinet approval, the Agreement should be amended so that people applying for New Zealand Superannuation under the Agreement will only be eligible for New Zealand Superannuation if they meet the age of eligibility for Australian Age Pension


AT ☒ Agree / Disagree

- 18 **note** that you may wish to discuss amending the age of entitlement for New Zealand Superannuation payable under the Agreement with your colleagues

AT ☒ Yes / No

- 19 **note** that your in-principle decision will allow us to progress negotiations with Australian officials towards the conclusion of the Agreement.

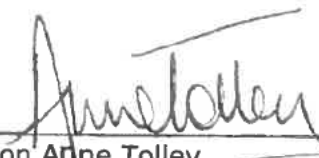
AT ☒ Yes / No



Sacha O'Dea
General Manager
Ageing, Disability and International

13/2/15

Date



Hon Anne Tolley
Minister for Social Development

18-2-15

Date

The age of eligibility to the Australian Age Pension is rising to 67 but the age of eligibility for New Zealand Superannuation will remain at 65

- 2 Australia is raising the age of eligibility for Australian Age Pension from 65 to 67 years. The age will increase by six months every two years starting from 1 July 2017 and settling at age 67 years on 1 July 2023. On 13 May 2014, the Australian Government also announced that the Australian Age Pension age will continue to rise from 67 to 70 years by 2035 but this measure has yet to be agreed to by the Australian Senate.
- 3 The age of eligibility for New Zealand Superannuation will remain at age 65 years.

We addressed a similar issue with the New Zealand and Australian ages of eligibility in the 1995 Agreement

- 4 A similar issue occurred under the 1995 Agreement where the age of eligibility for the Australian Age Pension for men was 65 and for women 60, but rising from 60 to 65 for women between 1994 and 2014. At the same time, the age of eligibility for New Zealand Superannuation for both men and women was rising from 60 to 65 between 1991 and 2001.
- 5 This issue was solved by limiting the age of eligibility in the Agreement to the later age required either under the domestic legislation of New Zealand or of Australia.

The difference in pension ages may create an incentive for people to move from Australia to New Zealand to receive a pension at an earlier age

- 6 Currently the age of eligibility for both New Zealand Superannuation and Australian Age Pension is 65 so there is no incentive to move from one country to the other to get a benefit payment from an earlier age.¹ However, unless a change is made to the age of eligibility for New Zealand Superannuation under the Agreement, the totalisation provisions² in the Agreement mean New Zealand will be required to pay New Zealand Superannuation at age 65 to:
 - Lifelong Australians who are not eligible for Australian Age Pension (because of their age or the income and assets test) and who have moved to New Zealand
 - New Zealanders returning to New Zealand who only meet the residential criteria for New Zealand Superannuation through the Agreement

¹ The rate of Australian Age Pension is income and asset tested so there is currently an incentive for Australians whose income and assets preclude eligibility to Australian Age Pension to move to New Zealand to gain eligibility to New Zealand Superannuation under the Agreement. However, there were only 36 Australians with no prior connection to New Zealand and no Australian Age Pension receiving New Zealand Superannuation in New Zealand at the end of September 2014.

² The residence requirement for New Zealand Superannuation is 10 years' New Zealand residence and presence from the age of 20, with five years being since the age of 50. The Agreement allows residence in Australia to be treated as residence in New Zealand to assist people to meet the residence criteria for New Zealand Superannuation. For example, a person is able to combine one year of New Zealand residence and presence with nine years of Australia residence and presence. This provision is known as 'totalisation'.

- New Zealanders in Australia over the age of 65 but below the age of eligibility to Australian Age Pension
- Australians in Australia who have prior residence in New Zealand for at least one year, the minimum period required for totalisation under the Agreement.

There are two options

Option 1: Amend the Agreement

- 7 We could amend the Agreement to require that, where a person needs to use the Agreement to qualify for New Zealand Superannuation (eg if they are residing in Australia, or if they are residing in New Zealand but do not meet the New Zealand residence criteria in their own right), they will only be eligible for payment of New Zealand Superannuation if they meet the age of eligibility to the Australian Age Pension. This is our preferred option and also the preferred option of the Treasury.

Benefits of this option

- 8 This is consistent with the original policy intent of the Agreement, as expressed in the 2001 joint communique by the Prime Ministers of New Zealand and Australia when the terms of the 2002 Agreement were announced. The terms are that a New Zealander resident in Australia is only able to receive New Zealand Superannuation at an amount comparable to the amount of Australian Age Pension that a lifelong Australian would receive.
- 9 This would also minimise any financial risk associated with people using the totalisation provisions to gain eligibility to New Zealand Superannuation at age 65.

Risks with this option

- 10 Potential amendments to the Agreement will need to be considered by the Social Services Select Committee. This process would bring the increasing age of eligibility for New Zealand Superannuation under the Agreement into the public domain and may attract media attention. It may also prompt other questions about the rights of New Zealanders in Australia.
- 11 New Zealanders who qualify at age 65 and then move to Australia will lose their eligibility to New Zealand Superannuation until they reach the age of eligibility to Australian Age Pension. This will mean New Zealanders in Australia become eligible for New Zealand Superannuation two years later than New Zealanders living elsewhere.

Managing the risk

- 12 Aligning the age of eligibility of New Zealand Superannuation with the age of eligibility for Australian Age Pension for people applying for New Zealand Superannuation under the Agreement would be consistent with the way that we dealt with a similar issue under the previous 1995 Agreement with Australia.
- 13 Only people who need to use the Agreement to qualify for New Zealand Superannuation would be affected by this option. Lifelong New Zealanders and New Zealanders returning from Australia who meet the residence criteria for

New Zealand Superannuation in their own right would still qualify for New Zealand Superannuation at age 65.

- 14 Readily accessible information on the Ministry website and staff training could minimise the risk of people moving to Australia prior to the age of eligibility to Australian Age Pension and losing their eligibility to New Zealand Superannuation.
- 15 We are in the process of revising most of New Zealand's older Agreements to ensure that the provisions in those the Agreements are up to date. We may need to consider whether we should raise the age of eligibility for New Zealand Superannuation under those Agreements so that it matches the age of eligibility for the equivalent old age pension in the country with which we have an Agreement.
- 16 Australian officials have agreed that the Agreement could be amended to change the age of eligibility for New Zealand Superannuation, should this be deemed necessary.

Option 2: Retain the existing provisions

- 17 The age of eligibility to New Zealand Superannuation for people who need to use the Agreement to qualify for New Zealand Superannuation could be retained at 65 years.

Benefits of this option

- 18 People who qualify for New Zealand Superannuation under domestic provisions and under the Agreement will be able to access New Zealand Superannuation at age 65. This will enable people to move between Australia and New Zealand and retain eligibility to New Zealand Superannuation at age 65.

Risks with this option

- 19 The following are potential risks with the rising age of eligibility for Australian Age Pension if the age of eligibility for New Zealand Superannuation remains at 65 years:
 - current forecasts for New Zealand Superannuation may be underestimated if New Zealanders currently working in Australia and/or Australian citizens choose to move to New Zealand in retirement
 - there could also be flow-on financial risks around health care and aged care as these migrants would be eligible for free health care either because they are New Zealand citizens or under the reciprocal health agreement with Australia
 - a potential large flow of retirees, many of whom might have wealth above the Australian pension income and asset threshold, could put demand pressure on the housing market.
- 20 Concerns about the financial impact associated with returning New Zealanders or lifelong Australians having access to New Zealand Superannuation under the Agreement at age 65 was also raised by the Australian and New Zealand Joint Productivity Commission in their report on Strengthening Trans-Tasman Economic Relations. The same issue was raised in the "Overseas pension policy: the next steps", Working Paper, no. 2011-1" written by the Retirement Policy and Research Centre of University of Auckland.

- 21 There are also operational impacts. For example, there is an automated daily exchange of information between New Zealand and Australia which provides each country with information about a person's change of circumstance which might result in payment rate change. Once the age of eligibility to the Australian Age Pension begins to rise, Australia will not hold any information about people who are younger than the age of entitlement to the Australian Age Pension but are receiving New Zealand Superannuation.

Managing the risk

- 22 We will be able to obtain the change of circumstance information directly from New Zealand superannuitants in Australia who are not eligible for the Australian Age Pension but the delays could result in underpayments or overpayments of New Zealand Superannuation.

Financial implications

- 23 It is not possible to estimate how many people might take advantage of the totalisation provisions in the Agreement to gain eligibility to New Zealand Superannuation if the age of eligibility for New Zealand Superannuation remains at 65 years. For this reason, we have provided indicative high level estimates of the impacts of the upcoming increase in the age of eligibility of the Australian Age Pension.
- 24 While the full effect of the increasing age of eligibility for the Australian Age Pension will not occur until the 2023/24 year, the figures we have provided show the estimated impact for the 2017/18 year, assuming an immediate two year increase occurs rather than a stepped approach over five years. This is done to provide a sense of scale of the impact.
- 25 We have provided two costs – one for people residing in Australia with at least one year of New Zealand residence and the other for returning New Zealanders, and Australians moving to New Zealand, who would be able to access New Zealand Superannuation at age 65 or 66.

People residing in Australia with at least one year of New Zealand residence

- 26 We have estimated the average number of Australian residents who would be able to access New Zealand Superannuation at age 65 or 66 would be 5,300 with an associated cost of \$31.6 million per year. We have also provided estimates on the minimum and maximum number of people likely to be affected. These figures are based on the number of Australian residents who have been granted New Zealand Superannuation in the past six financial years.

Table 1: Estimate of the potential number of Australian residents who would be able to access New Zealand Superannuation at age 65 or 66

2017/18	Number	Cost (\$ million)
Minimum	4,100	\$24.4
Average	5,300	\$31.6
Maximum	6,300	\$37.5

Returning New Zealanders, and Australians moving to New Zealand, to access New Zealand Superannuation at age 65 or 66

- 27 We have estimated that the average number of returning New Zealanders, and Australians moving to New Zealand, who would be able to access New Zealand Superannuation at age 65 or 66 would be 7,400 with an associated cost of \$30.7 million per year. We have also provided estimates on the minimum and maximum number of people likely to be affected. These figures are based on the number of returning New Zealanders, and Australians who have moved here, who have been granted New Zealand Superannuation in the past six financial years.

Table 2: Estimate of the number of returning New Zealanders, and Australians moving to New Zealand, to access New Zealand Superannuation paid in New Zealand at age 65 or 66

2017/18	Number	Cost (\$ million)
Minimum	5,200	\$21.6
Average	7,400	\$30.7
Maximum	10,200	\$42.4

Combined annual numbers and costs for New Zealand and Australian residents accessing New Zealand Superannuation at age 65 and 66

- 28 The combined average indicative numbers and annual costs for New Zealand and Australian residents accessing New Zealand Superannuation at age 65 and 66 would be 12,700 people with an associated cost of \$62.3 million per year.

New Zealand and Australian officials have been negotiating technical amendments to the Agreement

- 29 We have been revising the Agreement in order to update some provisions which are currently out of step with New Zealand and Australian legislation (eg New Zealand legislation concerning civil union and same-sex couples, and reduced residence requirements for benefit eligibility). There are also some errors and anomalies that need to be fixed. We have agreed with Australian officials on the majority of the technical amendments and will finalise the outstanding technical amendments by email over the next two months.
- 30 The issue of the rising age of eligibility to Australian Age Pension could be addressed in the current round of negotiations.

We believe that there needs to be fundamental review of the Agreement

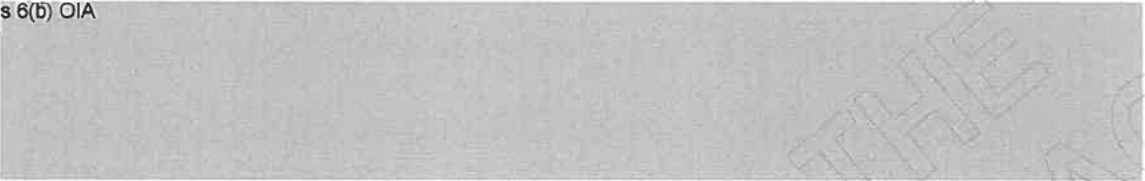
- 31 While the current round of negotiations will address some of the issues with the Agreement, we believe there needs to be a fundamental review of it in the near future.
- 32 The original aim of the current the Agreement was to make the social security arrangements between Australia and New Zealand less complex. A quote from the 2001 joint communiqué by the Prime Ministers of New Zealand and Australia stated:

"Both governments have sought to rationalise the current excessively complex arrangements for administering the bilateral agreement and for calculating bilateral reimbursements. More transparent and efficient

provisions will apply when the new bilateral social security agreement enters into force from 1 July 2002, under which the respective contributions of each government will be clear."

- 33 However, the provisions in the current the Agreement are significantly more complex than those in the previous Agreements and we believe they will not be sustainable in the long-term, given the increasing numbers of recipients on both sides of the Tasman.

34 s 6(b) OIA



Next steps

- 35 If you agree with our recommended option to amend the Agreement to align the ages of entitlement of New Zealand Superannuation and the Australian Age Pension, we will progress the negotiations with Australian officials towards the conclusion of the Agreement.
- 36 Once negotiations are finalised and the text of the Agreement is also finalised, it will be subject to legal scrutiny by the Ministry of Foreign Affairs and Trade.
- 37 The Privacy Commissioner will also be required to prepare a report to the Minister for Social Development and the Minister for Justice on whether:
- the Agreement complies with the privacy principles set out in the Privacy Act 1993 and
 - there is adequate privacy protection in Australia regarding the information provided by New Zealand about individuals covered by the Agreement.
- 38 After the Privacy Commissioner has presented this report, we will prepare a Cabinet paper to obtain approval to make this amendment, along with the other proposed amendments to the Agreement. We will draft the Cabinet paper in consultation with the Treasury, the Ministry of Foreign Affairs and Trade and other relevant government departments.
- 39 The amendments will also need to be considered by the Social Services Select Committee, before the amended Agreement can be signed.

File ref: A7812510

Appendix 1: Background information

New Zealanders in Australia

- 1 Since the late 1960s, trans-Tasman migration flows have been predominantly from New Zealand to Australia. The 2013 New Zealand Census identified that there were 62,712 Australian-born people living in New Zealand. In contrast, the 2011 Australian Census figures recorded that there were 483,398 New Zealand-born people living in Australia.
- 2 Around 156,000 (thirty two percent) of the New Zealand-born population in Australia are aged between 45 and 65 years.
- 3 The Australian census figures do not include New Zealand citizens living in Australia who were not born in New Zealand. According to the Australian Department of Immigration and Border Protection, there were 648,000 New Zealand citizens present in Australia on 30 June 2012.³

Benefit coverage under the Agreements with Australia has diminished over time

- 4 New Zealand's Agreements with Australia go back over sixty years (the first Agreement was introduced in 1943). There have been a number of revisions of the Agreement since that time.
- 5 Until 1986, the coverage of the Agreements included access to all social security benefits payments for each other's citizens. However, access to social security benefits under the Agreement has reduced over time, largely in response to Australia's concern about the substantial increase in the number of New Zealand citizens living in Australia.

The current the Agreement includes age and disability-related benefits

- 6 The current Agreement was introduced on 1 July 2002. This Agreement provides that people get dual payments – one from Australia and the other from New Zealand according to the proportion of the individual's working life spent in each country. The Agreement covers the following benefits:
 - New Zealand Superannuation, Veteran's Pension and Supported Living Payment for New Zealand; and
 - Australian Age Pension and Disability Support Pension for Australia.
- 7 The terms of the 2002 Agreement were announced in the joint communiqué issued by the Prime Ministers of Australia and New Zealand on 21 February 2001. An equity principle was contained in that communiqué, under which *"New Zealand superannuitants in Australia will not be entitled to receive more than other Australian Age Pension beneficiaries, and vice versa."* On this basis, the Agreement was designed to ensure that New Zealanders of retirement age who choose to live in Australia would be treated in the same way as lifelong residents of Australia.

³ Figures obtained from the Australian and New Zealand Joint Productivity Commission Report on Strengthening Trans-Tasman Economic Relations, Supplementary Paper D - People Movement

- 8 At 30 October 2014, we were making 33,908 New Zealand Superannuation payments, 5,837 Supported Living Payments and 74 Veteran's Pension payments to Australian residents.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

1 September 2015

Minister of Foreign Affairs

For information by 7 September 2015

PROPOSED AMENDMENTS TO THE AUSTRALIA-NEW ZEALAND SOCIAL SECURITY AGREEMENT

SUBMISSION Issue

PURPOSE To update you on proposed amendments to the Australia-New Zealand Social Security Agreement.

Recommended referrals

► Minister of Social Development For information by 9 September 2015
Minister of Finance For information by 9 September 2015

Contact details

NAME	ROLE	DIVISION	WORK PHONE	MOBILE PHONE
s 9(2)(a) OIA	Divisional Manager	AUS	s 9(2)(a) OIA	
	Policy Officer	AUS		

Minister's Office comments

Signed / Referred

Date: 4 / 9 / 15.

PROPOSED AMENDMENTS TO THE AUSTRALIA-NEW ZEALAND SOCIAL SECURITY AGREEMENT

Key points

- The Ministry of Social Development (MSD) and its Australian counterpart agency, the Department of Social Services (DSS), have embarked on discussions with a view to making technical changes to the A-NZ Social Security Agreement, which would be the first such change since 2002.
- This is a technical review, largely designed to ensure that the Agreement aligns with policy changes on both sides of the Tasman (eg the new age of eligibility for superannuation in Australia).

s 6(a) OIA

Recommendations

It is recommended that you:

- | | | |
|---|--|----------|
| 1 | Note that MSD and the Australian Department of Social Services have begun negotiating amendments to the Australia New Zealand Social Security Agreement text; and | Yes / No |
| 2 | Note that officials will report back to you when further information on negotiations becomes available. | Yes / No |



Bede Corry

Bede Corry
for Secretary of Foreign Affairs and Trade

PROPOSED AMENDMENTS TO THE AUSTRALIA-NEW ZEALAND SOCIAL SECURITY AGREEMENT

Report

1. The A/NZ Social Security Agreement (SSA, 1948) was last amended in 2002 following concern in Australia about the cost of New Zealanders' access to welfare. The 2001 negotiations resulted in cost-sharing of superannuation payments and payments to people with severe disabilities. At the same time, the Australian Government curtailed New Zealanders' access to unemployment and sickness benefits. Advocacy groups for the rights of vulnerable New Zealanders in Australia have since pressed both Governments to address the consequences of those changes.

Proposed Amendments

2. The Ministry of Social Development (MSD) and its Australian counterpart agency, the Department of Social Services (DSS), have embarked on discussions with a view to updating the SSA. MSD and DSS are engaged in a tidy up of the SSA, rather than anything more fundamental. Three categories of change are proposed:
 - 2.1. Lifting the age at which NZ Superannuation is payable under the SSA to New Zealanders in Australia to 67 years, to bring it in line with changes taking place in Australia. (The age of entitlement will increase by six months every two years starting on July 1st 2017 and settling at age 67 years on July 1st 2023).
 - 2.2. Technical amendments to address some anomalies in the agreement (e.g. introduce a time limit beyond which benefit payments cannot be backdated).
 - 2.3. Updates to ensure the SSA keeps step with change (e.g. same sex marriage).
3. MSD put a submission to the Minister of Social Development in November 2014. The Minister of Social Development agreed to allow MSD to progress negotiations with Australian officials towards amending the Agreement. MSD is now in the late stages of discussion with the DSS with a timetable towards implementation by 1st July 2017. Any amendments agreed would require Cabinet consideration and potentially passage through Parliament (were a Treaty waiver not granted).

Risks to manage

4. While discussions are focused on technical amendments to the SSA rather than fundamentally re-opening the 2002 deal, MFAT and MSD have been discussing two risks from this process.
5. First, a re-negotiation of the 2002 SSA may lead to questions among advocates for New Zealanders' rights in Australia about why the Government limited itself to technical amendments and did not broaden the negotiation out to include the rights of New Zealanders in Australia. The Government is of course addressing that issue

PROPOSED AMENDMENTS TO THE AUSTRALIA-NEW ZEALAND SOCIAL SECURITY AGREEMENT

with the Australian Government, but on a political track rather than in the context of the SSA (see para 7 below).

6. s 6(a) OIA

7.

Next Steps

8. The Ministry is engaging with MSD to manage any risks as MSD progress discussions with the DSS. We will continue to stay in touch with MSD about their discussions, particularly as they look to prepare a Cabinet Paper once the text is finalised with Australia.
9. The prospect is negotiations will be concluded in the next 18 months because both sides want the changes implemented by 1 July 2017. That means the revised SSA may need to go through a domestic Parliamentary process in late 2016. The risk of fundamentally technical amendments to the SSA being confused with the wider issues around New Zealanders in Australia will need to be managed, both through the negotiating process and Parliamentary consideration.
10. We will report when further information on negotiations becomes available.



Report

Date: 11 September 2015

Security Level: IN CONFIDENCE

To: Hon Anne Tolley, Minister for Social Development

Briefing for the Minister of Foreign Affairs on the Australian Social Security Agreement

Purpose of the report

- 1 The purpose of this report is to provide information on the report that was forwarded to you by the Minister of Foreign Affairs which relates to the proposed amendments to the Social Security Agreement between New Zealand and Australia.

Recommended actions

It is recommended that you:

- 1 **note** that New Zealand and Australia have been negotiating amendments to the Social Security Agreement between New Zealand and Australia and that these negotiations are almost finalised
noted
- 2 **note** that the Social Security Agreement between New Zealand and Australia only provides coverage for age and disability-related pensions
noted
- 3 **note** that there is the risk that the amendments to the Social Security Agreement between New Zealand and Australia may be seen as an opportunity to put further pressure on the Australian and New Zealand Governments to address issues about New Zealanders rights in Australia that fall outside the scope of this Agreement
noted
- 4 **note** that we are working with officials from the Ministry of Foreign Affairs to minimise this risk
noted
- 5 **note** that the Minister of Foreign Affairs has referred a report to you on the proposed amendments to the Social Security Agreement between New Zealand and Australia for your information
noted
- 6 **note** that the Ministry of Social Development was consulted in the drafting of the report to the Minister of Foreign Affairs and we approved the content
noted

- 7 **note** that you do not need to take any action in response to the report to the Minister of Foreign Affairs

noted

- 8 **note** that, before the amended Social Security Agreement between New Zealand and Australia is signed, the Privacy Commissioner is required to report to you and the Minister of Justice on whether this Agreement complies with the privacy principles set out in the Privacy Act 1993 and whether there is adequate privacy protection in Australia

noted

- 9 **note** that the proposed amendments to the Social Security Agreement between New Zealand and Australia will need to be considered by Cabinet

noted

- 10 **note** that, before the amended Social Security Agreement between New Zealand and Australia is signed, the amendments will also need to be considered by the Social Services Select Committee.

noted



Sacha O'Dea
General Manager
Ageing, Disability and International

11/9/15

Date



Hon Anne Tolley
Minister for Social Development

15-9-15

Date

New Zealand and Australia have been negotiating amendments to the Social Security Agreement since 2008

- 2 We have been revising the Social Security Agreement between New Zealand and Australia (the Agreement) which has been in operation since 2002¹, in order to update some provisions which are currently out of step with New Zealand and Australian legislation (eg New Zealand legislation concerning civil union and same-sex couples, and reduced residence requirements for benefit entitlement).
- 3 There are also some errors and anomalies that need to be fixed. On 18 February 2015, you agreed that, in principle and subject to Cabinet approval, the Agreement should be amended so that people applying for New Zealand Superannuation under the Agreement will only be eligible for New Zealand Superannuation if they meet the age of eligibility for the Australian Age Pension [REP 15/02/107 refers].
- 4 We have agreed with Australian officials on the majority of the technical amendments and will finalise the outstanding technical amendments by email over the next 10 months.

The Ministry of Social Development was consulted on the content of the report to the Minister of Foreign Affairs

- 5 The Ministry of Foreign Affairs recently provided a report to their Minister on the proposed amendments to the Agreement. This report was forwarded to you for your information so you do not need to take any further action.
- 6 We were consulted in the drafting of the report and our views were incorporated in the final draft.

The Ministry of Foreign Affairs and the Ministry of Social Development are working together to minimise any potential risks arising from the amendments

- 7 Coverage under Social Security Agreements is normally restricted to long-term entitlements such as age pensions, invalidity and surviving spouse benefits. It would be very unusual for a modern Social Security Agreement to include coverage for short-term benefits such as unemployment and sickness benefits. The Agreement with Australia only provides coverage for age and disability-related pensions.
- 8 On 26 February 2001, Australia changed its domestic legislation to limit access to Australian sickness and unemployment benefits for New Zealanders living in Australia. Advocates continue to lobby the Australian and New Zealand Governments to address the situation of Australian benefit access for vulnerable New Zealanders in Australia.
- 9 There is the risk that the amendments to the Agreement may potentially be seen as an opportunity to put further pressure on the Australian and New Zealand Governments to address issues about New Zealanders rights in Australia that fall outside the scope of the Agreement. However, we are working with officials from the Ministry of Foreign Affairs to minimise this risk.

Next steps

- 10 Once negotiations are completed and the draft text of the Agreement is finalised, it will be subject to legal scrutiny by the Ministry of Foreign Affairs. We anticipate that the negotiations will be completed by 30 June 2016.

¹ New Zealand has had Social Security Agreements with Australia dating back to 1948. There have been a number of revisions of the Agreement since that time.

- 11 The Privacy Commissioner will also be required to prepare a report to the Minister for Social Development and the Minister for Justice on whether:
 - the Agreement complies with the privacy principles set out in the Privacy Act 1993; and
 - there is adequate privacy protection in Australia regarding the information provided by New Zealand about individuals covered by the Agreement.
- 12 After the Privacy Commissioner has presented this report which normally takes around six to eight weeks, we will prepare a Cabinet paper to obtain approval to make these amendments to the Agreement. We will draft the Cabinet paper in consultation with the Treasury, the Ministry of Foreign Affairs and other relevant government departments. We anticipate that the Cabinet paper will be considered in September 2016.
- 13 The amendments will also need to be considered by the Social Services Select Committee before the amended Agreement can be signed.
- 14 The proposed date for implementation of the amended Agreement is 1 July 2017 as this is the date that the age of eligibility for the Australian Age Pension begins to rise.

File ref: A8356176



**MINISTRY OF SOCIAL
DEVELOPMENT**
TE MANATŪ WHAKAHIATO ORA

**Revised Social Security Agreement with Australia:
Approval for Signature**

SOC

Date: 25 October 2016
Security level: IN CONFIDENCE

Report no.: REP/16/10/1351
Priority: Medium

For consideration by Cabinet/Cabinet Committee on 2 November 2016

Current Stage of Paper

For signoff and submit to Cabinet Office By 10am on 27 October 2016

Action Sought

Hon Anne Tolley For your signature and submission to 28 October 2016
Minister for Social Development Cabinet office

Contact for telephone discussion

Name	Position	Telephone	1st Contact
Audrey Bancroft s 9(2)(a) OIA	General Manager	s 9(2)(a) OIA	<input checked="" type="checkbox"/>
	Policy Manager	s 9(2)(a) OIA	
		s 9(2)(a) OIA	

Report prepared [redacted] Senior Policy Analyst

Other departments consulted: The Ministry of Foreign Affairs and Trade, the Treasury

Minister's office comments

- ☐ Noted
- ☐ Seen
- ☐ Approved
- ☐ Needs change
- ☐ Withdrawn
- ☒ Not seen by Minister
- ☐ Overtaken by events
- ☐ Referred to (specify)

Comments

Approved by Ministerial
Advisers B, SOC.

Date received from MSD

Date returned to MSD

21 NOV 2016



MINISTRY OF SOCIAL
DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Report

Date: 6 October 2016

Security Level: IN CONFIDENCE

To: Hon Anne Tolley, Minister for Social Development

Revised Social Security Agreement with Australia: Approval for Signature

Purpose of the report

- 1 This report provides you with a draft Cabinet paper and regulatory Impact statement for your feedback by 13 October 2016.

Recommended actions

It is recommended that you:

- 1 **note** that we have negotiated a revised social security agreement with Australia
- 2 **note** that in order to prevent additional New Zealand Superannuation costs the social security agreement should come into force by 1 July 2017
- 3 **note** that in order to meet the 1 July 2017 deadline the social security agreement will need to be:
 - 3.1 considered by the Social Policy Committee on 2 November 2016
 - 3.2 signed in the week beginning 7 November
 - 3.3 tabled in the Australian House of Representatives by 1 December 2016
- 4 **agree** to sign the revised social security agreement in the week beginning 7 November 2017, after the Cabinet meeting

YES/NO

- 5 **agree** to provide feedback on the attached Cabinet paper and regulatory impact statement by 13 October 2017

YES/NO

6 agree to send a copy of the report to the Associate Minister for Social Development

YES/NO



Audrey Bancroft
General Manager
Seniors International and Disability


Date

Hon Anne Tolley
Minister for Social Development

Date

The Cabinet paper seeks Cabinet approval to sign a revised social security agreement with Australia

- 2 We have negotiated a revised social security agreement with Australia which:
- brings it into line with New Zealand legislation on civil unions
 - corrects some errors and anomalies (eg allowing New Zealand officials to make decisions about whether a person is residing in Australia)
 - will mean that people applying for New Zealand Superannuation (NZS) under the Agreement will only be eligible for NZS if they meet the age of eligibility for Australian Age Pension (because Australia is raising the age of eligibility for Australian Age Pension from 65 to 67 years and if the age of eligibility for NZS remains at age 65 years, this may create an incentive for people to move from one country to the other to get a pension at an earlier age).
- 3 Cabinet approval is required for you to sign the revised social security agreement.

The revised social security agreement needs to come into force by 1 July 2017

- 4 The entitlement age for Australian Age Pension will start to increase on 1 July 2017. This could result in potential additional NZS costs of \$42.9 million per year. To avoid incurring any additional costs it is important that the revised social security agreement comes into force by 1 July 2017.

The revised social security agreement will be brought into force by Order in Council

- 5 The revised social security agreement will be implemented by an Order in Council made pursuant to the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990. The Order in Council will replace the Social Welfare (Reciprocity with Australia) Order 2002.

We need to make arrangements for signature of the social security agreement

- 6 Social security agreements are usually signed by the Minister for Social Development. On the Australian side the social security agreement is likely to be signed by the Australian High Commissioner to New Zealand (no Australian ministers will be in New Zealand at the time the social security agreement needs to be signed).
- 7 To meet the 1 July 2017 deadline our Australian counterparts have informed us that it is important that the agreement is tabled in the Australian House of Representatives before 1 December 2016. Therefore we suggest that the signing takes place in the week beginning 7 November 2016. If you are unable to sign the social security agreement at this time we will attempt to identify an alternative minister to sign.

Next steps

- 8 In order to implement the revised social security agreement by 1 July 2017 we suggest the next steps and timing should be as follows:
- 13 October: MSD receives your feedback on the draft Cabinet paper and RIS
 - 17 October: draft Cabinet paper and RIS sent out for consultation with your ministerial colleagues
 - 27 October: Cabinet paper and RIS lodged with Cabinet Office
 - 2 November: Cabinet paper considered by the Social Policy Committee
 - social security agreement signed at a convenient time in the week following the Cabinet meeting on Monday 7 November.

Chair
Cabinet Social Policy Committee

REVISED SOCIAL SECURITY AGREEMENT WITH AUSTRALIA: APPROVAL FOR SIGNATURE

Proposal

- 1 This report proposes that the Committee agree to the signature and entry into force of the Agreement on Social Security between the Government of New Zealand and the Government of Australia (the Agreement).

Executive Summary

- 2 The current Agreement provides for payment of pensions and benefits to people who move between New Zealand and Australia and for the New Zealand and Australian Governments to share the costs of benefits paid to superannuitants, veterans and people with severe disabilities who have lived for part of their working lives in both countries.
- 3 Social security agreements between Australia and New Zealand date back to 1948. The current Agreement was signed in 2001 (the 2001 Agreement).
- 4 The amendments to the 2001 Agreement will update provisions which are out of step with New Zealand and Australian legislation (eg New Zealand legislation concerning civil unions). Some errors and anomalies will also be corrected.
- 5 In addition, this paper proposes an amendment to the 2001 Agreement to respond to forthcoming changes to the eligibility age for Australian Age Pension, which will result in the pension ages in Australia and New Zealand being different. The difference in pension ages could result in additional expenditure on New Zealand Superannuation¹ (NZS) of \$42.9 million per year. The paper proposes that people applying for NZS under the Agreement will only be eligible if they meet the age of eligibility for Australian Age Pension.
- 6 Updating the 2001 Agreement will make it easier to administer and will prevent potential additional expenditure on NZS of \$42.9 million per year.
- 7 I am seeking the Committee's agreement to New Zealand signing the Agreement and subsequently bringing the Agreement into force.

Background

- 8 People who have lived in more than one country sometimes find that they do not have enough residence or contributions under a social security scheme to qualify for a pension payment. To help overcome this problem, a network of social security agreements (SSAs) has been set up within the international community. One of the key elements of SSAs is that the partner countries broadly share the responsibility for social security coverage. New

¹ Many Veteran's Pension provisions under the War Pensions Act 1954 mirror NZS provisions under the New Zealand Superannuation and Retirement Income Act 2001. For ease of reading, any reference to NZS in this paper is also a reference to Veteran's Pension.

Zealand has nine SSAs with Australia, Canada, Denmark, Greece, Ireland, Jersey and Guernsey, Malta, the Netherlands, and the United Kingdom.

- 9 SSAs are treaties between the partner countries. In New Zealand, Cabinet must approve the signature of a SSA, and SSAs of particular importance are tabled in the House of Representatives and referred to a Select Committee for Parliamentary treaty examination. SSAs are brought into force and amended by Order in Council.
- 10 Like the 2001 Agreement, the benefit coverage of the revised Agreement will be limited to:
 - for New Zealand – NZS, Veteran's Pension and Supported Living Payment for the severely disabled
 - for Australia – Australian Age Pension, Disability Support Pension for the severely disabled and Carer Payment in respect of the partner of a person who is in receipt of a disability support pension.
- 11 This is consistent with the normal approach to modern social security agreements which is to restrict benefit coverage to long-term entitlements (as opposed to short-term benefits such as unemployment and sickness-related benefits).
- 12 The 2001 Agreement provides that people get dual payments – one from Australia and the other from New Zealand according to the proportion of the individual's working life spent in each country.
- 13 The terms of the 2001 Agreement were announced in a joint communiqué issued by the Prime Ministers of Australia and New Zealand on 21 February 2001. The Prime Ministers stated that "New Zealand superannuitants in Australia will not be entitled to receive more than other Australian Age Pension beneficiaries, and vice versa."

Comment

The 2001 Agreement is out of step with New Zealand legislation

- 14 Over time treaties can become out of step with domestic legislation.
- 15 Since the 2001 Agreement was implemented in July 2002 New Zealand has passed the Civil Union Act 2004, which means that, for pension and benefit payments, civil union and same sex couples must be treated the same as married couples. The 2001 Agreement does not currently reflect this treatment and therefore needs to be updated in this regard.
- 16 Making this amendment to the 2001 Agreement also provides the opportunity to correct some minor errors and anomalies in the 2001 Agreement. One of the current anomalies in the 2001 Agreement is the requirement that a person must be an Australian resident in order to be entitled to NZS or Supported Living Payment payable in Australia. If Australian officials consider a person to be an Australian resident, the current wording of the 2001 Agreement requires New Zealand officials to also consider this to be the case, even where there is clear evidence that a person is residing outside of Australia. Updating the 2001 Agreement would allow New Zealand officials to make their own decisions about whether a person was residing in Australia or elsewhere.

From July 2017 the pension ages in Australia and New Zealand will be different

- 17 Updating the 2001 Agreement will also mean that people applying for NZS under the Agreement will only be eligible if they meet the age of eligibility for Australian Age Pension.

- 18 The reason for this proposed amendment is that Australia is raising the age of eligibility for Australian Age Pension from 65 to 67 years.² If the age of eligibility for NZS remains at age 65 years, this may create an incentive for people to move from one country to the other to get a pension at an earlier age.
- 19 Under the 2001 Agreement, New Zealanders resident in Australia are able to receive a payment based on their periods of residence in New Zealand over a 45 year period ie if they have lived in New Zealand for 10 years they will be eligible for 10/45ths of the maximum net rate of payment. However, this payment is capped at the income and asset tested rate that an Australian resident would receive if that person had no connection to New Zealand.
- 20 A fundamental principle of the 2001 Agreement was explained in a media statement of 26 February 2001 released by the Prime Ministers of Australia and New Zealand which noted that "Under the equity principle, New Zealand Superannuitants in Australia will not be entitled to receive more than other Age Pension beneficiaries, and vice versa."
- 21 The residence requirement for NZS is 10 years of New Zealand residence and presence from the age of 20, with five years being since the age of 50. The 2001 Agreement allows residence in Australia to be treated as residence in New Zealand to assist people to meet the residence criteria for NZS and vice versa (this provision is known as 'totalisation'). For example, a person is able to combine one year of New Zealand residence and presence with nine years of Australia residence and presence, to enable that person to meet the residential criteria for NZS.
- 22 Consequently, if a change is not made to the 2001 Agreement, the totalisation provisions will result in New Zealand being required to pay NZS at age 65 to:
- Australians, over the age of 65 but below the age of eligibility for Australian Age Pension, who move to New Zealand and who only meet the residential criteria for NZS through the totalisation provisions in the Agreement
 - New Zealanders, over the age of 65 but below the age of eligibility for Australian Age pension, who return to New Zealand and who only meet the residential criteria for NZS through the totalisation provisions in the Agreement
 - New Zealanders in Australia over the age of 65 but below the age of eligibility for Australian Age Pension
 - Australians in Australia over the age of 65 but below the age of eligibility to Australian Age Pension who have prior residence in New Zealand of at least one year.
- 23 Updating the 2001 Agreement will mean that the equity principle mentioned in the February 2001 media statement of the Australian and New Zealand Prime Ministers will be maintained. Where a person needs to use the Agreement to qualify for NZS (eg if they are residing in Australia, or if they are residing in New Zealand but do not meet the New Zealand residence criteria in their own right), they will only be eligible for payment of NZS if they meet the age of eligibility for the Australian Age Pension.

There are potential costs if no action is taken

- 24 It is not possible to accurately estimate how many people might take advantage of the provisions in the 2001 Agreement to gain eligibility to NZS if the age of eligibility for NZS

² The age will increase by six months every two years starting from 1 July 2017, settling at age 67 years on 1 July 2023.

under the Agreement remains at 65 years. Consequently, officials have provided indicative high level estimates.³

- 25 Two cost estimates have been made – one for people residing in Australia with at least one year of New Zealand residence and the other for returning New Zealanders, and Australians moving to New Zealand, who would be able to access NZS at age 65 or 66.

People residing in Australia with at least one year of New Zealand residence

- 26 Officials have estimated the average number of Australian residents who would be able to access NZS at age 65 or 66 would be 5,900 with an associated cost of \$34.7 million per year. Officials have also provided estimates of the minimum and maximum number of people likely to be affected. These figures are based on the number of Australian residents who have been granted NZS in the past six financial years.

Table 1: Estimate of the potential number of Australian residents who would be able to access NZS at age 65 or 66

2017/18	Estimated Number	Estimated Cost (\$ million)
Minimum	4,700	\$27.6
Average	5,900	\$34.7
Maximum	6,500	\$38.2

Returning New Zealanders, and Australians moving to New Zealand, to access NZS at age 65 or 66

- 27 Officials have estimated that the average number of returning New Zealanders, and Australians moving to New Zealand, who would be able to access NZS at age 65 or 66 would be 1,900 with an associated cost of \$8.2 million per year. Officials have also provided estimates on the minimum and maximum number of people likely to be affected. These figures are based on the number of returning New Zealanders, and Australians who have moved here, who have been granted NZS in the past six financial years.

Table 2: Estimate of the number of returning New Zealanders, and Australians moving to New Zealand, to access NZS paid in New Zealand at age 65 or 66

2017/18	Estimated Number	Estimated Cost (\$ million)
Minimum	1,100	\$4.8
Average	1,900	\$8.2
Maximum	2,300	\$10.0

- 28 The combined average indicative numbers and annual costs for New Zealand and Australian residents accessing NZS at age 65 and 66 would be 7,800 people with an associated cost of \$42.9 million per year.

³ The full effect of the increasing age of eligibility for the Australian Age Pension will not occur until the 2023/24 year. The figures officials have provided show the estimated impact for the 2017/18 year, assuming an immediate two year increase occurs rather than a stepped approach over five years. This is done to provide a sense of scale of the impact.

Officials have negotiated a revised text of the 2001 Agreement

- 29 Officials have been in negotiations with the Australian Department of Social Services to agree the necessary amendments to the 2001 Agreement. Australian officials have agreed in principle to the Agreement, subject to the approval of relevant Australian ministers and the Executive Council. I propose to sign the Agreement in November 2016.
- 30 On 13 October 2016, the Minister of Foreign Affairs decided that the Agreement was not a major bilateral treaty of particular significance and therefore did not need to be subject to the Parliamentary treaty examination process.
- 31 The Agreement will come into force on 1 July 2017 as long as both countries have notified each other by diplomatic note that all matters necessary to give effect to the Agreement have been completed. If the notes are exchanged after 1 July 2017 the Agreement will enter into force on the first day of the third month following the date of the last notification.
- 32 It is important that the Agreement is brought into force by 1 July 2017, as this is the day that the eligibility age for Australian Age Pension will start to increase and additional NZS costs would be incurred. On the Australian side, if they are to meet the 1 July 2017 start date, the Agreement must be tabled in the Australian Parliament before it finishes sitting in 2016 (the last sitting day is 1 December).
- 33 The Agreement does not apply to Tokelau.

Consultation

- 34 The Ministry of Foreign Affairs and Trade and Treasury have been consulted and agree with the recommendations in this paper. The Department of Prime Minister and Cabinet have been informed.

Financial implications

- 35 There are no financial implications if the amendments are agreed to and implemented by 1 July 2017. However, indicative estimates suggest that unless a change is made to the NZS qualification age under the Agreement, 7,800 New Zealand and Australian residents would access NZS at age 65 and 66 with an associated cost of \$42.9 million per year
- 36 The Agreement results in other costs and benefits which will be the same as the costs and benefits resulting from the 2001 Agreement.

Human rights implications

- 37 The proposal in this paper is consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative implications

- 38 The Agreement will be implemented by way of overriding regulation in the form of an Order in Council made pursuant to the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990. The Order in Council will replace the Social Welfare (Reciprocity with Australia) Order 2002. No other domestic legislation or regulation is required to implement the Agreement.

Regulatory impact and compliance cost statement

- 39 The regulatory impact analysis requirements apply and a regulatory impact statement (RIS) is attached which focuses on the issue of the forthcoming difference in pension ages in New Zealand and Australia.
- 40 A Principal Analyst from the Ministry of Social Development, who was not involved in development of the RIS has reviewed the RIS and considers that it meets the quality assurance criteria.

Gender implications

- 41 A gender analysis has not been undertaken. The proposal will affect men and women similarly.

Publicity

- 42 Public information on the Ministry of Social Development website will be updated to reflect the changes brought about by the Agreement. Similar changes will be made to information on the Australian Department of Human Services website.
- 43 Officials from the Ministry of Social Development and the Ministry of Foreign Affairs and Trade will work together to provide information for those who may have questions on the amendments to the Agreement and the rights and entitlements of New Zealanders in Australia. The following key points will be made:
- The amendments are technical to address existing minor errors and anomalies and do not alter the fundamental nature of the Agreement
 - The 2001 Agreement currently covers long-term entitlements such as age and disability and this coverage will not change
 - The Agreement does not provide coverage for short-term benefits such as unemployment and sickness-related benefits for those New Zealanders in Australia who have not become permanent residents of Australia or Australian citizens.

Recommendations

- 44 It is recommended that the Committee:

- 1 **note** that the Agreement on Social Security between the Government of New Zealand and the Government of Australia 2001 (the 2001 Agreement) provides for payment of pensions and benefits to people who move between New Zealand and Australia
- 2 **note** that the 2001 Agreement has not kept up with changes to New Zealand legislation around civil unions and same sex couples and needs to be amended to reflect these changes
- 3 **note** that from 1 July 2017 Australia will increase the eligibility age for Australian Age Pension from 65 to 67 during the period from 2017 to 2013 while the eligibility age for New Zealand Superannuation (NZS) will remain at 65, and therefore there will be a two year difference in the pension ages in New Zealand and Australia
- 4 **note** that the difference in the pension ages:

- 4.1 may create an incentive for people to move from Australia to New Zealand to get a pension at an earlier age
- 4.2 will result in Australian residents who have prior residence in New Zealand being able to receive a pension earlier than other Australian residents if there is no amendment to the 2001 Agreement
- 5 **note** that indicative estimates suggest that unless a change is made to the NZS qualification age under the Agreement 7,800 New Zealand and Australian residents could access NZS at age 65 and 66 with an associated cost of \$42.9 million per year
- 6 **note** that officials have concluded the text of the Agreement which updates the 2001 Agreement
- 7 **note** that the Agreement will:
- 7.1 mean that people applying under the Agreement will only be eligible for NZS if they meet the age of eligibility for Australian Age Pension
- 7.2 be up to date with civil union and same sex legislation
- 7.3 correct some minor anomalies and errors in the 2001 Agreement
- 8 **approve** the text of the Agreement which is attached as Annex A, subject to any minor or technical changes arising from the process of legal verification
- 9 **agree** that New Zealand sign the Agreement
- 10 **note** that on 13 October 2016, the Minister of Foreign Affairs decided that the Agreement was not a major bilateral treaty of particular significance and therefore did not need to be subject to the Parliamentary treaty examination process
- 11 **note** that the Agreement will be implemented by overriding regulation in the form of an Order in Council
- 12 **note** that the Agreement will enter into force on 1 July 2017 if both countries have notified each other by diplomatic note that all matters necessary to give effect to the Agreement have been completed and on the first day of the third month following the date of the last notification if diplomatic notes are exchanged after 1 July 2017
- 13 **authorise** the conclusion of the exchange of diplomatic notes.

Hon Anne Tolley
Minister for Social Development

____ / ____ / ____

UNCLASSIFIED



NEW ZEALAND
FOREIGN AFFAIRS & TRADE



7 October 2016

Minister of Foreign Affairs

For action by 14 October 2016

Bilateral Treaty Waiver: Updated Social Security Agreement with Australia

SUBMISSION Issue

PURPOSE To seek your approval that *the Agreement on Social Security between the Government of New Zealand and the Government of Australia* (the Agreement) is not a "major bilateral treaty of particular significance", and so need not be subject to the Parliamentary treaty examination process.

COMMENTS If you agree, the next step would be the presentation of the Cabinet paper by the Minister of Social Development seeking approval to sign the Agreement and have it enter into force.

Recommended referrals

Contact details

NAME	ROLE	DIVISION
Lucy Duncan	Deputy Secretary	MLG
	MLG	
	Legal Adviser	LGL
	Unit Manager	
	Legal Adviser	LGL
	International	
	Treaties	

WORK PHONE	MOBILE PHONE
s 9(2)(a) OIA	

Minister's Office comments

Signed / Referred

Date: 13 / 10 / 2016

LEGA-21-1493

UNCLASSIFIED

Bilateral Treaty Waiver: Updated Social Security Agreement with Australia

Key points

- Officials have finalised the text of *the Agreement on Social Security between the Government of New Zealand and the Government of Australia* (the Agreement).
- Social security agreements between New Zealand and Australia date back to 1948. The social security agreement that is currently in force (the 2001 Agreement) provides for the New Zealand and Australian Governments to share the costs of benefits paid to superannuitants, veterans and people with severe disabilities who have lived for part of their working lives in both New Zealand and Australia.
- The Agreement replaces the 2001 Agreement, correcting certain errors and anomalies and updating provisions which are now out of step with New Zealand and Australian legislation. A key part of the amendment is to address the extra burden which might otherwise be placed on New Zealand Superannuation (NZS) as a result of the age of eligibility for the Australian Age Pension rising from 65 to 67.
- The Agreement, subject to any minor technical changes that may arise as a result of legal verification or translation, is **attached** as Annex I. Under Standing Order 397, if a treaty constitutes a "major bilateral treaty of particular significance" it must be presented to the House of Representatives. This is for the Minister of Foreign Affairs to determine, in accordance with the relevant criteria **attached** as Annex II.
- The Agreement is unlikely to be of major public interest as it makes only minor changes to the 2001 Agreement and will have a minimal impact on individuals already subject to it. However, an estimated average 7,800 people who might otherwise have accessed superannuation at age 65 or 66 will be affected by the increase in the age of eligibility in Australia to 67. These amendments may attract public interest in the rights and entitlements of New Zealanders in Australia.

The Agreement does not have significant financial implications. The Agreement is a positive step, but not a "major development", in the bilateral relationship between New Zealand and Australia.

The Agreement will be implemented by overriding regulations in the form of an Order in Council passed under the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990 (the Act). Accordingly, the Agreement has the capacity to override provisions of the Act, the Social Security Act 1964, Part 6 of the War Pensions Act 1954, Part 1 of the New Zealand Superannuation and Retirement Income Act 2001 (NZS Act) and the regulations and orders in force under that legislation. However, as the similar provisions in the 2001 Agreement already override this legislation, the Agreement's actual impact will be limited to changing the definition of "pension age" under the NZS Act. The change in definition will mean that persons applying for NZS that are residing in Australia and those in New Zealand who do not meet the New Zealand residence criteria in their own right will only be eligible for payment of NZS if they meet the age of eligibility for Australian Age Pension.

Bilateral Treaty Waiver: Updated Social Security Agreement with Australia

- As a result of the above considerations, officials recommend that the Agreement does not constitute a "major bilateral treaty of particular significance".

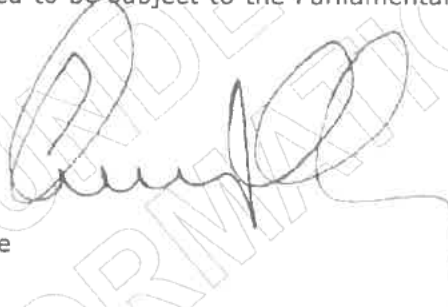
Recommendations

It is recommended that you:

- Note** that officials have finalised the text of *the Agreement on Social Security between the Government of New Zealand and the Government of Australia* (the Agreement);
- Agree** that the Agreement is not a "major bilateral treaty of particular significance", and so does not need to be subject to the Parliamentary treaty examination process.



Lucy Duncan
for Secretary of Foreign Affairs and Trade



ANNEX I

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

DRAFT

AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF
AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND

The Government of Australia, and

The Government of New Zealand

Referred to in this Agreement as "the Parties"

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

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

WISHING to modify and replace the Agreement providing for matters relating to social security entered into at Canberra on 28 March 2001, as amended on 21 February 2002

HAVE agreed as follows:

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PART I
DEFINITIONS AND SCOPE

ARTICLE 1

Definitions

1. In this Agreement unless the context otherwise requires:
- (a) "Australian resident" has the meaning given to it under Article 5;
 - (b) "benefit", in relation to a Party, means the benefits as listed and defined in Article 2 and, unless otherwise stated, includes any amount, increase or supplement that is payable in addition to that benefit or in respect of a person who is eligible for that amount, increase or supplement under the social security law of that Party;
 - (c) "competent authority", in relation to New Zealand, means the chief executive of the department for the time being responsible for the implementation of the *Social Security Act 2016* and in relation to Australia, the Secretary of the Australian Government department responsible for the legislation specified in Article 2(1)(a);
 - (d) "competent institution", in relation to a Party, means the institution or institutions that are responsible for the administration or implementation of the social security law of that Party;
 - (e) "date of severe disablement" means the date a person who applies for a disability support pension or supported living payment was first assessed as meeting the criteria for a disability support pension or supported living payment under this Agreement or, where evidence supports an earlier date, the competent institutions may agree on an earlier date ;
 - (f) "legislation" in relation to a Party, means the laws, orders and regulations of that Party specified in Article 2 ;
 - (g) "living alone", in relation to New Zealand superannuation or veteran's pension, has the meaning given to it under the social security law of New Zealand; and "not living alone" has a corresponding meaning;
 - (h) "month", in relation to New Zealand, means a calendar month, but where fractions of a month are to be aggregated, a month means 30 days;
 - (i) "New Zealand resident" has the meaning given to it under Article 5;
 - (j) "pension age", means the qualifying age for New Zealand superannuation or the qualifying age for the Australian age pension, whichever is the higher age at the relevant time. For the avoidance of doubt, the "pension age" so determined will operate as the qualifying age wherever the "pension age" is referred to in this Agreement, irrespective of whether it is in the Australian or New Zealand context;
 - (k) "permanent resident of Australia" has the meaning given to it under Article 5;
 - (l) "present long term" means when a person is physically present in the territory of either Party and either has been in the territory of that Party for at least 26 weeks, or intends to remain in the territory of that Party for one year or more;
 - (m) "severely disabled" means a person who:
 - (i) has a physical impairment, a psychiatric impairment, an intellectual impairment, or two or all of such impairments, which makes the person, without taking into account any other factor, totally unable:

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- (ii) to work for at least the next 2 years; and
- (iii) unable to benefit within the next 2 years from participation in a program of assistance or a rehabilitation program; or
- (iv) is permanently blind;

For the avoidance of doubt, a person can be severely disabled even if they are not of working age.

- (n) "social security law" means,
 - (i) in relation to Australia, the *Social Security Act 1991*, the *Social Security (Administration) Act 1999* and the *Social Security (International Agreements) Act 1999*; and
 - (ii) in relation to New Zealand the *New Zealand Superannuation and Retirement Income Act 2001*, the *Social Security Act 2016* and the Orders in Council and Regulations made under those Acts;
- (o) "supported living payment" means a New Zealand payment on the grounds of sickness, injury, disability, or total blindness but does not include a payment on the grounds of caring for a person requiring full-time care;
- (p) "territory", in relation to New Zealand, means: New Zealand only and not the Cook Islands, Niue or Tokelau; and, in relation to Australia, means: Australia as defined in the social security law of Australia; and references to "New Zealand", "Australia" or the "territory" of either shall be read accordingly;
- (q) "third country" means a country other than Australia or New Zealand;
- (r) "third country pension" in relation to New Zealand, means an overseas pension as defined in the social security law of New Zealand and, in relation to Australia, means a comparable foreign payment as defined in the social security law of Australia;
- (s) "third country residence" has the meaning given to it under Article 5;
- (t) "working age residence" has the meaning given to it under Article 5;
- (u) "year" means 12 calendar months;
- (v) "1994 Agreement" means the Agreement on Social Security between the Government of New Zealand and the Government of Australia done at Wellington on 19 July 1994, as amended on 7 September 1995 and 2 July 1998;
- (w) "1994 Agreement benefit" means a benefit defined in the 1994 Agreement in Article 2, paragraph 1, subparagraphs (a)(i), (ii), (iii), (iv), (v), (vi) and (vii); and
- (x) "2001 Agreement" means the Agreement on social security between the Government of Australia and the Government of New Zealand, signed on the twenty-eighth day of March 2001 as amended by an Exchange of Notes completed on the twenty-first day of February 2002 (entered into force 1 July 2002).

2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the social security law of either Party.

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ARTICLE 2

Legislative Scope

1. Except as provided under paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any legislation that subsequently amends, supplements, consolidates or replaces them:
 - (a) in relation to Australia: the Acts forming the social security law in so far as those Acts provide for, apply to or affect the following benefits:
 - (i) age pension;
 - (ii) disability support pension;
 - (iii) carer payment in respect of the partner of a person who is in receipt of a disability support pension; and
 - (b) in relation to New Zealand: the social security law and the Veteran's Support Act 2014 insofar as they provide for, apply to or affect the following benefits:
 - (i) New Zealand superannuation;
 - (ii) veteran's pension; and
 - (iii) supported living payment.
2. For the purposes of this Agreement an Australian disability support pension and a New Zealand supported living payment shall be limited to cases where:
 - (a) the person is severely disabled;
 - (b) the person was a resident of one of the Parties at the date they became severely disabled; and
 - (c) the person, prior to the date of severe disablement, was residing in the territory of the other Party for a period of not less than one year at any time.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

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

ARTICLE 4

Equality of Treatment

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

ARTICLE 5

Residence Definitions

1. "Australian resident" has the meaning given to that term in the social security law of Australia but for the purposes of the Agreement also includes a New Zealand citizen who is not the holder of an Australian permanent visa but is lawfully residing in Australia on a special category visa. In deciding whether a person is residing in Australia, regard must be had to the following factors:
 - (a) the nature of the accommodation used by the person in Australia;
 - (b) the nature and extent of the family relationships the person has in Australia;

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- (c) the nature and extent of the person's employment, business or financial ties with Australia;
- (d) the nature and extent of the person's assets located in Australia;
- (e) the frequency and duration of the person's travel outside Australia; and
- (f) any other matter relevant to determining whether the person intends to remain permanently in Australia;

and "residence in Australia" has a corresponding meaning.

2. "New Zealand resident" means, a person who has or had New Zealand as their principal place of residence except where that person was unlawfully resident or present in New Zealand or lawfully resident or present in New Zealand only by virtue of:

- (a) a visitor's permit;
- (b) a temporary work permit; or
- (c) a permit to be in New Zealand for the purposes of study at a New Zealand school or university or other tertiary educational establishment;

and "residence in New Zealand" has a corresponding meaning.

3. "permanent resident of Australia" means a person who resides in Australia and is one of the following:

- (a) an Australian citizen;
- (b) the holder of a permanent visa; or
- (c) a protected special category visa holder as defined under the social security law of Australia.

4. "third country residence" means a period of residence when a person was not either an Australian resident or a New Zealand resident.

5. "working age residence" means a period of residence in the territory of a Party from the age of 20 until the qualifying age for age pension in Australia or the qualifying age for New Zealand Superannuation, whichever is relevant, (up to a maximum of 45 years). It does not include any period deemed pursuant to Article 8 or Article 12 to be a period in which a person was an Australian resident or a New Zealand resident. For the purposes of Articles 9, 10 and 13, if a person's period of working age residence would, apart from this point, be a number of whole months, or a number of whole months and a day or days, the period is to be increased so that it is equal to the number of months plus one month.

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PART II
PROVISIONS RELATING TO NEW ZEALAND BENEFITS

ARTICLE 6
Residence in Australia

1. Where a person would be entitled to receive a benefit under the social security law of New Zealand (including a person who would be entitled under Article 8) except that he or she is not ordinarily resident and resident and present in New Zealand on the date of application for that benefit, that person shall be deemed, for the purposes of that application, to be ordinarily resident and resident and present in New Zealand on that date, if he or she:
 - (a) is either:
 - (i) ordinarily resident and present in Australia; or
 - (ii) present long term in Australia; and
 - (b) has been a New Zealand resident at any time in his or her life for a continuous period of at least one year since attaining the age of 20 years; and
 - (c) in the case of New Zealand superannuation or a veteran's pension, has reached pension age under this Agreement.
2. Subject to this Agreement, where a person is entitled to receive a benefit under the social security law of New Zealand (including a person who is entitled under paragraph 1, or Article 7, or both) but payment of that benefit is conditional on presence in New Zealand, that person shall be deemed, for the purpose of the payment of that benefit, to be present in New Zealand, if he or she is ordinarily resident and present in Australia.
3. For the purposes of this Part, if a person who is ordinarily resident in Australia is temporarily absent from Australia for a continuous period that does not exceed 26 weeks, the period of temporary absence from Australia shall not be considered as interrupting that person's residence in Australia.
4. In the case of a person who has reached pension age under this Agreement, New Zealand superannuation or a veteran's pension which would otherwise be payable to a person in New Zealand shall continue to be payable for up to 26 weeks after the person's departure from New Zealand if that person departs New Zealand with the intention of becoming ordinarily resident in Australia and applies to receive New Zealand superannuation or veteran's pension under the Agreement within 26 weeks of that person's departure from New Zealand .
5. A supported living payment which would otherwise be payable to New Zealand shall continue to be payable for up to 4 weeks after the person's departure from New Zealand if that person departs New Zealand with the intention of becoming ordinarily resident in Australia and applies to receive a supported living payment under the Agreement within 4 weeks of that person's departure from New Zealand.
6. If an application referred to in paragraphs 4 and 5 is granted under the Agreement, the rate of New Zealand benefit payable after the date of grant shall be the rate payable in accordance with the Agreement. If the application is declined, the New Zealand benefit first referred to in that paragraph shall only be payable in Australia after the date of that decision if the person is entitled to receive that payment under New Zealand domestic law.

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7. No New Zealand benefit shall be granted to a person who is in receipt of a benefit under the 1994 Agreement at the time that this Agreement comes into force unless that person ceases to be in receipt of that 1994 Agreement benefit.
8. Except as provided in paragraph 9, a person who is ordinarily resident in Australia is not entitled to receive, or to continue to receive, a supported living payment if the person:
 - (a) reaches pension age under this Agreement; and
 - (b) is entitled to receive New Zealand superannuation or a veteran's pension, under this Article or otherwise.
9. A person who is ordinarily resident in Australia and is married, in a civil union, or in a de facto relationship, is not entitled to receive, or continue to receive, a supported living payment if both the person and his or her spouse or partner have reached pension age.

ARTICLE 7

Presence in New Zealand

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

ARTICLE 8

Totalisation for New Zealand

1. In determining whether a person meets the residential qualifications for a New Zealand superannuation or a veteran's pension, the competent institution of New Zealand shall deem a period of Australian working age residence to be a period during which that person was both a New Zealand resident and present in New Zealand.
2. In determining whether a person meets the residential qualifications for a supported living payment, the competent institution of New Zealand shall deem a period as an Australian resident to be a period during which that person was both a New Zealand resident and present in New Zealand.
3. For purposes of paragraphs 1 and 2, where a period of residence in New Zealand and a period of residence in Australia coincide, the period of coincidence shall be taken into account only once as a period of residence in New Zealand.
4. The minimum period in Australia to be taken into account for the purposes of:

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- (a) paragraph 1, shall be 12 months working age residence, of which 6 months must be continuous; and
 - (b) paragraph 2, shall be 12 months residence, of which 6 months must be continuous.
5. This Article shall not apply to a claimant for New Zealand superannuation or a veteran's pension who has not reached pension age under this Agreement.

ARTICLE 9

Rate of New Zealand Superannuation and Veterans' Pensions in Australia

1. Except as provided in paragraph 3, where a person in Australia is entitled to receive New Zealand superannuation or a veteran's pension under Article 6, the amount of that benefit shall be calculated in accordance with the following formula:

number of whole months New Zealand working age residence x maximum benefit rate

540

subject to the following provisions:

- (a) all periods of working age residence in New Zealand shall be aggregated;
 - (b) the maximum benefit rate shall be:
 - (i) in the case of a single person, the maximum rate of benefit (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) payable under the social security law of New Zealand to a single person who is not living alone; and
 - (ii) in the case of a person who is married, in a civil union or in a de facto relationship, the maximum rate of benefit (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) payable under the social security law of New Zealand to a person who is married, in a civil union or in a de facto relationship whose spouse also qualifies for New Zealand superannuation or a veteran's pension in his or her own right;
 - (c) in no case shall the rate of benefit exceed 100% of the maximum benefit rate as defined in subparagraph (b);
 - (d) except for a third country pension taken into account under subparagraph (e), or as provided for in paragraph 3 of this Article, no account shall be taken of any benefit that is payable under the social security law of Australia; and
 - (e) no account shall be taken of any third country pension that is payable under the legislation of a third country unless paragraph 2 applies.
2. Where a person in Australia receives a New Zealand benefit payable under this Agreement and is not a permanent resident of Australia, periods of working age residence in a third country shall be deemed for the purposes of this Article to be periods of working age residence in New Zealand.
3. Where a person is entitled to receive New Zealand superannuation or a veteran's pension under Article 6, the rate of New Zealand superannuation or veteran's pension shall be calculated under paragraph 1 but the amount the person is entitled to receive shall not exceed the amount of Australian pension that would have been payable to that person if he or she was entitled to receive an Australian pension but was not entitled to receive New Zealand superannuation or a veteran's pension.

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ARTICLE 10

Rate of New Zealand Supported Living Payment in Australia

1. Except as provided in paragraph 2, when a person in Australia is entitled to receive New Zealand supported living payment under Article 6, the amount of that benefit shall be calculated in accordance with the following formula:

number of whole months of

$$\frac{\text{New Zealand working age residence} \times \text{maximum benefit rate}}{Y}$$

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

- (a) all periods of working age residence in New Zealand shall be aggregated;
- (b) the maximum benefit rate shall be:
 - (i) in the case of a single person, the maximum rate (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) of benefit that the person would be entitled to receive under the social security law of New Zealand before any abatement on account of income;
 - (ii) in the case of a person who is married, in a civil union or in a de facto relationship, the maximum rate (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) of benefit that the person would be entitled to receive under the social security laws of New Zealand before any abatement on account of income;
- (c) in no case shall the rate of benefit exceed 100% of the maximum benefit rate as defined in subparagraph (b);
- (d) except for a third country pension taken into account under subparagraph (e), or as provided in paragraph 2, no account shall be taken of any benefit that is payable under the social security law of Australia; and
- (e) no account shall be taken of any third country pension if that person is a permanent resident of Australia.

2. The rate of supported living payment for a person who qualifies under Article 6 shall be calculated under paragraph 1, but the amount the person is entitled to receive shall not exceed:

- (a) in the case of a single person, the amount of Australian disability support pension that would have been payable if that person was entitled to receive an Australian disability support pension but not entitled to receive a supported living payment; or
- (b) in the case of a person who is married, in a civil union or in a de facto relationship, the aggregated amount of Australian disability support pension and carer payment that would have been payable if that person was entitled to an Australian disability support pension and his or her spouse or partner was entitled to a carer payment and that person had not been entitled to receive a supported living payment.

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PART III
PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 11

Residence or Presence in Australia or New Zealand

1. Where a person would not qualify for a benefit under the legislation of Australia or by virtue of this Agreement only because he or she was not an Australian resident and present in Australia on the date on which the claim for that benefit would be lodged but that person:
 - (a) is an Australian resident or a New Zealand resident; and
 - (b) is present long term in Australia or New Zealand;that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.
2. A claimant for an age pension must be of pension age under this Agreement to be able to obtain the benefit of this Article.
3. If a person applies for a carer payment under this Agreement, references to Australia in the provisions of the social security law of Australia relating to qualification for carer payment shall be read also as references to New Zealand.
4. If a person is qualified for a carer payment under this Agreement, that person can receive that payment if that person has an aggregate period of residence of at least 2 years in Australia and/or New Zealand.

ARTICLE 12

Totalisation for Australia

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

That period of working age residence in New Zealand shall be deemed to be a period in which that person was an Australian resident only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.
2. Where a person's period of working age residence in Australia and a period of working age residence in New Zealand coincide, the period of coincidence shall be taken into account once only by Australia for the purposes of this Article as a period as an Australian resident.
3. The minimum period of Australian working age residence to be taken into account for the purposes of paragraph 1(b) shall be as follows:
 - a. for the purposes of an Australian benefit payable to a person present long term in New Zealand, the minimum period shall be one year of which at least six months must be continuous; but

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- b. for the purposes of an Australian benefit payable to a person present long term in Australia there will be no minimum period.
- 4. A claimant for an age pension under this Agreement must be of pension age to be able to obtain the benefit of this Article.

ARTICLE 13

Calculation of Australian Benefits

- 1. Where an Australian benefit is payable to a person, whether by virtue of the Agreement or otherwise, the rate of that benefit shall be determined under the social security law of Australia but when assessing the income of that person, no New Zealand benefit paid to that person shall be regarded as income, if the person is an Australian or New Zealand resident, while the person is in Australia or New Zealand or for the period of a temporary absence in a third country, or if the person resides in a third country and an Australian benefit is deducted from the rate of benefit payable by New Zealand. In all other situations, any New Zealand benefit received will be assessed as income.
- 2. Subject to paragraph 3, where an Australian benefit is payable, by virtue of this Agreement or otherwise, to a person who is present long term in Australia, the rate of that benefit shall be determined by:
 - (a) calculating that person's income according to the social security law of Australia but disregarding in that calculation the New Zealand benefit or benefits received by that person and, where applicable, any third country pension as provided in paragraph 7;
 - (b) applying the income test to the maximum rate of benefit as set out in the social security law of Australia, using as the person's income, the amount calculated under subparagraph (a); then
 - (c) deducting the amount of the New Zealand benefit or benefits, and where applicable any third country pension as provided in paragraph 7, received by that person from the rate of Australian benefit worked out under subparagraph (b).
- 3. A benefit paid under paragraph 2 shall continue to be calculated in the same way if the person goes to New Zealand and is not present long term there.
- 4. Where a member of a couple is, or both that person and his or her partner are, entitled to:
 - (a) a New Zealand benefit or benefits; and/or
 - (b) any third country pension;then each of them shall be deemed, for the purpose of this Article and for the social security law of Australia, to receive one half of either the amount of that benefit or the total of both of those benefits, as the case may be.
- 5. (a) Where an age pension is payable, by virtue of this Agreement or otherwise, to a person who is present long term in New Zealand and who has less than 10 years as a New Zealand resident, then the rate of that age pension shall be determined (subject to paragraph 1) in accordance with the following formula:

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

where,

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A = rate payable.

Z = period in months of working age residence in New Zealand.

R = the rate that would have been payable if that person had been in Australia and was qualified under the social security law of Australia to receive age pension.

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

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

where,

A = rate payable.

W = period in months of working age residence in Australia with a minimum period of 12 months.

R = the rate that would have been payable if that person had been in Australia and was qualified under the social security law of Australia to receive age pension.

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

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

where,

A = rate payable.

L = period in months of working age residence in Australia between age 20 and the date of severe disablement with a minimum number of 12 months.

N = period of working age residence in New Zealand between age 20 and the date of severe disablement.

R = the rate that would have been payable if that person had been in Australia and was qualified under the social security law of Australia to receive that disability support pension.

7. For the purposes of:

- (a) paragraph 2, where the pensioner is in Australia, but not a permanent resident of Australia;
- (b) subparagraph 5(a); and
- (c) paragraph 6, where the pensioner has less than 10 years as a New Zealand resident,

any third country pension will be disregarded in the assessment of the pension and directly deducted from the rate of Australian pension.

8. Subject to paragraph 1, where a carer payment is payable, by virtue of this Agreement or otherwise, to a person who is in New Zealand or to a person caring for a person who receives his or her disability support pension by virtue of this Agreement, the rate of that carer payment shall be the same proportion of the maximum carer payment as the proportion of the maximum disability support pension that is received by the person for whom the care is being given.

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9. A benefit paid under paragraphs 5, 6, or 8 shall continue to be calculated in the same way if the person goes to Australia and is not present long term there.
10. A benefit paid under paragraphs 2, 5, 6, or 8 shall continue to be calculated in the same way if the person goes to a third country temporarily. A benefit which is payable otherwise than by virtue of this Agreement shall be subject to the proportional calculation rules in the social security law of Australia for any period of temporary absence in a third country in excess of the period allowed for the payment of a benefit under this Agreement in Article 14. For a benefit which is payable otherwise than by virtue of this Agreement, the provisions regarding the assessment of any New Zealand benefit, and where applicable, any third country pension from the rate of Australian benefit, shall continue to apply as if the person was in Australia or New Zealand, as the case may be, for the period that the New Zealand benefit is payable under this Agreement in a third country.

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PART IV
COMMON PROVISIONS ON ELIGIBILITY

ARTICLE 14
Export of Benefits

1. A benefit payable by a Party under this Agreement shall, subject to other provisions of this Agreement, continue to be payable to a person who goes to the territory of the other Party.
2. A person who is ordinarily resident in New Zealand and:
 - (a) is entitled to receive a benefit solely through the application of the totalising provisions of Article 8; and
 - (b) either:
 - (i) departs New Zealand with the intention of residing in a third country for a period which exceeds 26 weeks; or
 - (ii) resides in a third country for a period which exceeds 26 weeks;

shall only be entitled to receive a benefit while outside of New Zealand if he or she is entitled to receive that benefit under a reciprocal social security agreement that New Zealand has entered into with that third country.
3. Where a person, who is ordinarily resident in Australia and is entitled to a benefit by virtue of this Agreement, departs for a third country:
 - (a) a New Zealand benefit shall continue to be payable in accordance with the provisions for temporary absences under the social security law of New Zealand as if the person was a New Zealand resident at the time he or she departed for the third country; and
 - (b) in the case where the person intends to be or is absent from Australia for a period which exceeds 26 weeks, a New Zealand benefit shall cease to be payable from the date of departure.
4. For the purposes of a New Zealand benefit, if a person who has been ordinarily resident in Australia either intends to be or is absent from Australia for a period which exceeds 26 weeks, that person shall cease to be considered ordinarily resident in Australia on the date of his or her departure from Australia.
5. Where a person, who is in receipt of an Australian age pension by virtue of this Agreement, goes to a third country temporarily that benefit shall continue to be payable for the period that the social security law of Australia provides that a person who is absent from Australia remains entitled to the Australian age pension, before which the rate of age pension becomes calculated on a proportional basis. At that time, payment of the age pension by virtue of this Agreement will cease entirely. Age pension will cease to be payable by virtue of this Agreement from the date of departure if the absence is permanent.
6. Where a person, who is in receipt of an Australian disability support pension by virtue of this Agreement, goes to a third country temporarily, that benefit shall continue to be payable for the period that the social security law of Australia provide that a person who is absent from Australia remains entitled to the disability support pension (disregarding any exceptions and circumstances where the period is unlimited). At that time, payment of the disability support pension by virtue of this Agreement will cease. Disability support pension will cease to be payable by virtue of this Agreement from the date of departure if the absence is permanent.

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7. Where a person, who is in receipt of an Australian carer payment by virtue of this Agreement, goes to a third country temporarily, that benefit shall continue to be payable for the period that the social security law of Australia provides that a person who is absent from Australia remains entitled to the carer payment, disregarding any exceptions. At that time payment of the carer payment by virtue of this Agreement will cease. Carer payment will cease to be payable by virtue of this Agreement from the date of departure if the absence is permanent.

ARTICLE 15

Payment of Supplementary Benefits and Allowances

1. Where a New Zealand resident becomes entitled to receive a New Zealand benefit under Article 8, the competent institution of New Zealand shall also pay to that person any supplementary benefit or allowance under the social security law of New Zealand for which that person is qualified.
2. Where an Australian resident becomes entitled to receive a New Zealand benefit under this Agreement,
 - (a) the amount of that benefit shall not include any supplementary benefit or allowance which would be payable under the social security law of New Zealand if that person were a New Zealand resident;
 - (b) no payment shall be made in advance of any number of instalments of that benefit, or part of it, not yet due.
3. Where an Australian resident qualifies for an Australian benefit under this Agreement or otherwise but the person's rate of Australian benefit is zero solely due to the operation of subparagraph 2(c) of Article 13, that person shall be deemed to be receiving an Australian benefit, as defined in Article 1(1)(b) and shall therefore be eligible to receive relevant and applicable concessions under the social security law of Australia.
4. Where a person outside of Australia is entitled to receive an Australian benefit under this Agreement, the amount of that benefit shall not include any supplementary benefit or allowance, except as payable to a person outside of Australia as provided by the social security law of Australia.

ARTICLE 16

Residence Issues

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

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PART V
COMMON PROVISIONS RELATING TO BENEFIT PAYMENTS

ARTICLE 17

Lodgement of Documents

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the territory of either Party in accordance with administrative arrangements made pursuant to Article 21 at any time after the Agreement enters into force.
2. For the purpose of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the competent institution of one Party shall be considered as the date of lodgement of that document with the competent institution of the other Party. The competent institution with which a claim, notice or appeal is lodged shall refer it without delay to the competent institution of the other Party.
3. The reference in paragraph 2 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by, or administratively for the purposes of, their respective legislation.
4. The date on which a claim for a benefit under the legislation of one 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 claimant provides information at the time of the initial claim indicating that he or she has completed a period of working age residence in the other country; and
 - (b) the competent institution of the other Party receives the claim for that corresponding benefit within 12 months of the date of lodgement of the initial claim; and
 - (c) if the claimant is applying for an age pension or New Zealand superannuation, he or she has reached pension age under this Agreement.

ARTICLE 18

Exchange of Information

1. The competent authorities shall advise each other:
 - (a) of laws that amend, supplement or replace the legislation of their respective Parties for the application of this Agreement, promptly after the first-mentioned laws are made;
 - (b) directly of internal action to implement this Agreement and any administrative arrangements made for its implementation; and
 - (c) of any technical problems encountered when applying the provisions of this Agreement or of any administrative arrangements made for its implementation.
2. The competent institutions shall supply each other with any information in their possession or that they are lawfully able to obtain that may assist with verification of the country or countries in which an applicant for benefit to which this Agreement applies has acquired periods of working age residence and each competent institution shall supply that information in the manner specified in the administrative

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arrangements made pursuant to Article 21. The information supplied may include information that identifies any person, including the person's name, date of birth, sex, passport number, country of citizenship, the date or dates on which the person arrived or departed from Australia or New Zealand, and information identifying the aircraft or ship on which he or she arrived or departed, as the case may be.

3. The competent institutions shall communicate to each other, as soon as possible, in relation to each benefit granted by the other Party, all information in their possession or that they are lawfully able to obtain, that is required:
 - (a) to verify that the person in receipt of that benefit is eligible to receive it under the social security law of the Party granting the benefit;
 - (b) to verify the amount of benefit payable; and
 - (c) for the recovery of any social security debt under this Agreement.
4. The competent institutions shall, on request, assist each other in relation to the implementation of Agreements on social security entered into by either of the Parties with third countries, to the extent and in the circumstances specified in the administrative arrangements made pursuant to Article 21.
5. The assistance referred to in paragraphs 2 to 4 shall be provided subject to the terms and conditions set out in Part A of the Schedule of this Agreement, and free of charge except where specified in the Schedule or in the administrative arrangements made pursuant to Article 21.
6. Unless disclosure is required and is permitted under the laws of both Parties, then, except as provided in Part A of the Schedule of this Agreement, any information about an individual that is transmitted in accordance with this Agreement to a competent authority or a competent institution by the competent authority or competent institution of the other Party is confidential and shall be used only for the purposes of implementing this Agreement and the social security law of either Party.
7. Where an exchange of information authorised under this Article is of a kind to which Part X of the *New Zealand Privacy Act 1993* or the *Privacy Act 1988 of Australia* would apply, the administrative arrangements shall, in accordance with Part A of the Schedule of this Agreement:
 - (a) include provisions that ensure, in relation to New Zealand, that the safeguards that are required under New Zealand privacy laws in information matching agreements are complied with and that the arrangements are consistent with the information matching rules under New Zealand privacy laws;
 - (b) include provisions that ensure, in relation to Australia, that the safeguards that are required under Australian privacy laws in information matching agreements are complied with and that the arrangements are consistent with the information matching rules under Australian privacy laws; and
 - (c) list the items of information that each Party may request under this Article.
8. Any information transmitted in accordance with this Agreement to a competent institution shall be protected in the same manner as information obtained under the social security law of the receiving Party.
9. No term in this Article shall affect the obligations of the Parties under Article 24.

ARTICLE 19

Recovery of Overpayments

1. For Australia where:

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

then:

the amount that would not have been paid by Australia had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period shall be a debt due by that person to Australia.

- 2. A reference to a benefit in this Article, in relation to Australia, means a pension, benefit or allowance that is payable under the Acts forming the social security law of Australia as amended from time to time, and in relation to New Zealand means any pension, benefit, allowance or advance made by a competent institution including overpayments which arise because of the payment of Australian and New Zealand benefits.

Recovery from arrears

- 3. Where:

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

then:

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

Recovery by instalment or lump sum

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

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7. The competent institution that is making deductions or is about to make deductions under paragraph 4 shall also accept any regular or lump sum payment from the person concerned for the purposes of repaying the excess benefit received by that person.

Restitution

8. The amounts deducted or received by the competent institution of one of the Parties in accordance with paragraphs 3, 4 or 7 shall be remitted to the other competent institution as agreed between the competent institutions or in administrative arrangements made pursuant to Article 21.
9. Recovery of overpayments by either Party under this Agreement shall be subject to the terms and conditions set out in Part B of the Schedule of this Agreement.

ARTICLE 20

Limitations

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

ARTICLE 21

Administrative Arrangements

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

ARTICLE 22

Currency

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

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PART VI
MISCELLANEOUS PROVISIONS

ARTICLE 23

Settlement of Disputes

1. The competent authorities of the Parties shall settle, to the extent possible, any disputes that arise in interpreting or applying the provisions of this Agreement having regard to its spirit and fundamental principles.
2. The Parties shall consult promptly at the request of either concerning matters which have not been settled by the competent authorities in accordance with paragraph 1.

ARTICLE 24

Review of the Agreement

1. The Parties may agree at any time to review any of the provisions of this Agreement. If a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than six months after that request was made unless otherwise agreed.
2. If a meeting is requested under paragraph 1 then the requesting Party agrees to travel to the territory of the other Party, unless otherwise agreed.

ARTICLE 25

Schedule to the Agreement

The Schedule of this Agreement is an integral part of this Agreement.

ARTICLE 26

Transitional Provisions

1. Subject to this Agreement, when this Agreement enters into force pursuant to Article 27, the 2001 Agreement shall terminate and persons who were receiving benefits by virtue of the 2001 Agreement shall receive those benefits by virtue of this Agreement.
2. Notwithstanding paragraph 1, 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 Article 12(4) or 14(2) of the 2001 Agreement; or
 - (b) is qualified to receive a benefit referred to in subparagraph (a) and has lodged a claim for that benefit;no provision of this Agreement shall affect that person's qualification to receive that benefit.
3. Any person who is in receipt of a benefit under the 1994 Agreement shall continue to be entitled to receive that benefit in accordance with the provisions of Part II of the 1994 Agreement, as if the 1994 Agreement remained in force, for so long as that person remains continuously in receipt of a benefit under the 1994 Agreement.
4. A person who is in receipt of a benefit under the 1994 Agreement shall not be required to claim a benefit from the other Party under this Agreement, whether or not legislation of the first Party obliges him or her to do so.

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ARTICLE 27

Entry into Force and Termination

1. The Agreement shall enter into force on 1 July 2017 provided that the Parties have notified each other by notes exchanged through the diplomatic channel that all matters necessary to give effect to this Agreement have been completed; otherwise it shall come into force on the first day of the third month following the date of the last such notification.
2. Subject to paragraph 3, this Agreement shall remain in force until either:
 - (a) the expiration of 12 months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of either Party to terminate the Agreement; or
 - (b) the date of entry into force of a later treaty between the Parties relating to the same subject matter as this Agreement, and which the Parties intend shall govern that same subject matter in place of this Agreement.
3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who by virtue of this Agreement:
 - (a) at the date of termination, are in receipt of benefits; or
 - (b) prior to the expiry of the period referred to in subparagraph (a), have lodged claims for, and would be entitled to receive, benefits.

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

DONE in two copies in the English language at PLACE on this DATE day of MONTH 20XX.

FOR THE GOVERNMENT
OF AUSTRALIA

FOR THE GOVERNMENT
OF NEW ZEALAND

Schedule

Part A

Terms and conditions for exchange of information for social security purposes

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

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

Part B

Terms and conditions for recovery of social security debts

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

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