

ANNEX II

Bilateral Treaty Waiver Criteria

1. The subject matter of the treaty is likely to be of major interest to the public; the treaty deals with an important subject upon which there is no ready precedent (i.e. it is an original treaty dealing with possibly a one-off situation);
2. The treaty deals with an important subject and departs substantively from previous models relating to the same subject;
3. The treaty represents a major development in the bilateral relationship;
4. The treaty has significant financial implications for the Government;
5. The treaty cannot be terminated, or remains in force for a specified period, thus binding future Governments permanently or for a specified time;
6. The treaty is to be implemented by way of overriding treaty regulations (i.e. regulations that implement a treaty and override primary legislation);
7. The treaty is a major treaty that New Zealand seeks to terminate;
8. The Foreign Affairs, Defence and Trade Committee indicates its interest in examining the treaty.

Aide-mémoire



MINISTRY OF SOCIAL
DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Meeting

Date: 4 November 2016 **Security Level:** IN CONFIDENCE

For: Hon Anne Tolley, Minister for Social Development

File Reference: A9256638

Amendments to the Social Security Agreement between New Zealand and Australia: Approval for Signature and Preparation of the Order in Council

Meeting/visit details 7 November 2016, Parliament

Key issues

Social security agreements between Australia and New Zealand date back to 1948. The current Agreement was signed in 2001.

The key amendment will align the ages of entitlement for age-related pensions

The age at which New Zealand Superannuation (NZS) is payable under the Agreement will be aligned with the Australian Age Pension age which is increasing from 65 years to 67 years between 2017 and 2023.

We have provided you with some key messages that can be used for any queries about the NZ Super Age increasing in the Agreement

We have provided the attached information about the reason for the change and its impact that can be used to address any potential queries. One of the key messages is that the change maintains the equity principle agreed to by the Prime Ministers of New Zealand and Australia in 2001 that New Zealanders in Australia should not receive more than lifelong Australians and vice versa.

Minister Foss asked a question at SOC about whether the rising age of entitlement for the Australian Age Pension (AAP) will have an impact a person's ability to access Australian Superannuation Guarantee and Kiwisaver at age 65

The Australian and New Zealand Governments have an Agreement that allows people to transfer funds from their KiwiSaver account to the Australian equivalent scheme, the Australian Superannuation Guarantee (ASG) and vice versa. This Agreement is separate from the Social Security Agreement.

The age where a person can access funds in ASG schemes is not

linked to the age of entitlement to AAP. People can access both ASG and Kiwisaver at age 65 (or earlier under certain conditions). Australian officials have advised that there are no plans at this time to raise the age of access for ASG schemes.

Next steps

Signing the Agreement

The timing of the signing of the Agreement is still yet to be determined. We understand the Australian Minister for Social Services, Hon. Christian Porter, is highly likely to be visiting New Zealand from 6 - 8 December 2016 and would like to sign the Agreement while he is here. However, whether this visit will take place has yet to be confirmed.

Social security agreements are normally signed by the Minister of Foreign Affairs but he can delegate this function to another Minister through an Instrument of Full Powers which is prepared by the Ministry of Foreign Affairs and Trade (MFAT). MFAT have advised that it can take two to three weeks for the Instrument of Full Powers to be prepared and signed so this timing needs to be factored in when scheduling a date for signing the Agreement.

Author: § 9(2)(a) OIA Senior Policy Analyst, Seniors, International and Disability.]
Responsible manager: Audrey Bancroft, General Manager, Seniors, International and Disability

Change to the Social Security Agreement: New Zealand and Australia

A change is being made to the Social Security Agreement between New Zealand and Australia.

Why?

Australia is raising the age at which people qualify for its Age Pension

The age of eligibility for the Australian Age Pension (AAP) is rising from 65 to 67.

Starting on 1 July 2017, the eligibility age will rise by six months every 18 months, as follows:

People born between these dates	Will qualify for AAP at age
1 July 1952 to 31 December 1953	65 years and 6 months
1 January 1954 to 30 June 1955	66 years
1 July 1955 to 31 December 1956	66 years and 6 months
From 1 January 1957 onwards	67 years

How does the Agreement work?

Normally, to qualify for New Zealand Superannuation (NZS), a person has to have at least 10 years' New Zealand residence from the age of 20, with five of those years from the age of 50. They must also normally be resident in New Zealand when they apply for NZS.

The current Agreement allows New Zealanders, who are resident in Australia, to be deemed to be resident in New Zealand so they can apply for NZS. Similarly, Australians resident in New Zealand can be deemed to be resident in Australia so they can apply for AAP.

People are able to combine New Zealand residence with Australian residence to meet the residence criteria for NZS (this is known as totalisation). For example, a person can combine eight years' Australian residence with two years' New Zealand residence to meet the NZS residence requirement of ten years.

We're amending the current Agreement

The amendment will mean that, after 1 July 2017, New Zealanders in Australia who need to use the Agreement to qualify for NZS will need to have reached the age of entitlement for AAP. This maintains the equity principle because it ensures that New Zealanders in Australia do not get more than lifelong Australian residents.

If the amendment was not made, New Zealand would be required to pay an additional \$NZ of \$42.9 million (approx) per year to an extra 7,800 New Zealand and Australian residents who will be able to access NZS at age 65.

Impact for New Zealanders

New Zealanders living in or moving to Australia will have to wait until they reach the AAP age to qualify for New Zealand Superannuation (NZS) or AAP.

Why is the change necessary?

A principle of equity underpins the Agreement.

In a media statement of 26 February 2001 the Prime Ministers of Australia and New Zealand 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."

If the NZS age is not changed, New Zealanders living in Australia could get a pension when other Australian residents could not.

Examples of the impact on people who need the Agreement to qualify for NZS

1. *New Zealanders in Australia over the age of 65 but below the age of eligibility for AAP*

Mr A was born in New Zealand in 1957, moved to Australia in 2012 at age 55 and has remained there ever since. In 2022, Mr A will turn 65. Because he is resident in Australia rather than in New Zealand, he needs to use the Agreement to qualify for NZS.

Under the amendment to the Agreement, Mr A will not be eligible for NZS until 1 February 2024 when he reaches the AAP age of 67 years.

2. *New Zealanders, over the age of 65 but below the age of eligibility for AAP, who return to New Zealand and who only meet the residential criteria for NZS through the totalisation provisions in the Agreement*

Mr D was born in New Zealand in 1955 and moved to Australia in 1990 at age 35. He moved back to New Zealand at age 65 on 1 December 2020. Because he does not meet the NZS residence criteria of 5 years over 50, he needs to use the Agreement to qualify for NZS.

Mr D will not be eligible for NZS until 29 June 2021 when he reaches the AAP age of 66 years.

3. *Australians in Australia over the age of 65 but below the age of eligibility to AAP who have prior residence in New Zealand of at least one year.*

Mr B was born in Australia on 3 July 1955 and lived in Australia for most of his life except for nine years in New Zealand between 1995 and 2003. On 3 July 2020, Mr B will turn 65. Because he is resident in Australia rather than in New Zealand and he does not meet the NZS residence criteria of 10 years over 20 and 5 years over 50, he needs to use the Agreement to qualify for NZS.

Under the amendment to the Agreement, Mr B will not be eligible for NZS until 3 December 2021 when he reaches the AAP age of 66 years and 6 months.

4. *Australians, over the age of 65 but below the age of eligibility for AAP, who move to New Zealand and who only meet the residential criteria for NZS through the totalisation provisions in the Agreement*

Mr C was born in Australia on 30 December 1953 and lived there until 1 January 2019 when he moved to New Zealand at age 65. Because he does not meet the NZS residence criteria of 10 years over 20 and 5 years over 50, he needs to use the Agreement to qualify for NZS.

Mr C will not be eligible for NZS until 1 July 2019 when he reaches the AAP age of 65 years and 6 months.

Does the change have an impact on New Zealanders resident in NZ who qualify for NZS?

If they have lived in New Zealand for 10 years, with five of those years from the age of 50, they will still receive NZS at 65.

1. *New Zealanders, below the age of eligibility for AAP, who return to New Zealand and meet the residential criteria for NZS at age 65*

Mr E was born in New Zealand on 1 June 1955. He moved to Australia in July 1990 (when he was 35 years old) but returned to New Zealand on 30 March 2014 (when he was 59) and has been here ever since. He will reach the age of 65 on 1 June 2020. Because he is resident in New Zealand and meets the NZS residence criteria of 10 years over age 20 with five of those years over 50, he does not need to use the Agreement to qualify for NZS. Mr E will be eligible for NZS when he turns 65.

2. *New Zealanders, who turn 65 while in Australia and then return to New Zealand before they reach the age of eligibility for AAP, who met the residential criteria for NZS before they originally moved to Australia*

Mr F was born in New Zealand on 6 February 1957. He moved to Australia on 8 February 2012 when he was 55. He remained in Australia for 10 years before returning to New Zealand permanently on 27 February 2022 (just after his 65th birthday). Mr F does not need to use the Agreement to qualify for NZS and will be eligible for NZS from 27 February 2022 (the date he arrived back in New Zealand) because he will be resident in New Zealand on that date and he had already met the NZS criteria before he left New Zealand for Australia.

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OFFICIAL INFORMATION ACT



Cabinet Social Policy Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Revised Social Security Agreement with Australia

Portfolio Social Development

On 2 November 2016, the Cabinet Social Policy Committee:

- 1 **noted** that the Agreement on Social Security between the Government of New Zealand and the Government of Australia 2001 (the 2001 Agreement) provides for the payment of pensions and benefits to people who move between New Zealand and Australia;
- 2 **noted** 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 **noted** that from 1 July 2017, Australia will start to increase the eligibility age for the Australian Age Pension from 65 to 67 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 **noted** 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 **noted** 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 **noted** that officials have concluded the text of the Agreement which updates the 2001 Agreement;
- 7 **noted** 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 **approved** the text of the Agreement, attached as Annex A to the submission under SOC-16-SUB-0149, subject to any minor or technical changes arising from the process of legal verification;
- 9 **agreed** that New Zealand sign the Agreement;
- 10 **noted** 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 **noted** that the Agreement will be implemented by overriding regulation in the form of an Order in Council;
- 12 **invited** the Minister for Social Development to issue drafting instructions to the Parliamentary Counsel Office for the Order in Council;
- 13 **noted** 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;
- 14 **authorised** the conclusion of the exchange of diplomatic notes.

Jenny Vickers
Committee Secretary

Present:

Rt Hon John Key
Hon Bill English
Hon Steven Joyce
Hon Paula Bennett (Chair)
Hon Amy Adams
Hon Christopher Finlayson QC
Hon Hekia Parata
Hon Anne Tolley
Hon Judith Collins
Hon Michael Woodhouse
Hon Maggie Barry
Hon Craig Foss
Hon Jo Goodhew
Hon Nicky Wagner
Hon Louise Upston
Hon Peter Dunne
Hon Te Ururoa Flavell

Hard-copy distribution:

Cabinet Social Policy Committee
Office of the Prime Minister
Minister of Foreign Affairs
Legislation Co-ordinator

Officials present from:

Office of the Prime Minister
Department of the Prime Minister and Cabinet
Office of the Chair of SOC
Office of the Minister of Education
Office of the Minister for Social Development
Ministry of Social Development
Office of the Minister of Police
Officials Committee for SOC



MINISTRY OF SOCIAL
DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Report

Date: 21 April 2017

Security Level: IN CONFIDENCE

To: Hon Anne Tolley, Minister for Social Development

Social Security Agreement between New Zealand and Australia: Approval for the Order in Council

Purpose of the report

- 1 This report provides you with a Cabinet paper seeking approval for the Order in Council which will bring the revised Social Security Agreement between New Zealand and Australia into effect in New Zealand law.

Next steps

- 2 The Cabinet paper is scheduled to be considered at LEG on 4 May 2017. This means that the paper will need to be submitted to Cabinet Office by 10.00am on Thursday 27 April 2017.

Recommended actions

It is recommended that you:

- 1 **agree** to sign the attached Cabinet paper and submit it to Cabinet Office by 10.00am on Thursday 27 April 2017

HA Agree/Disagree

- 2 ~~agree to send a copy of the report to the Associate Minister for Social Development.~~

~~Agree/Disagree~~

Justine Cornwall
Justine Cornwall
General Manager
Seniors, International and Disability Policy

21.4.2017
Date

Anne Tolley
Hon Anne Tolley
Minister for Social Development

26-4-17
Date

Author: *s 9(2)(a) OIA* Senior Policy Analyst, Seniors, International and Disability Policy
Responsible manager: *s 9(2)(a) OIA* Policy Manager, Seniors, International and Disability Policy

Chair
Cabinet Legislation Committee

**REVISED SOCIAL SECURITY AGREEMENT WITH AUSTRALIA: APPROVAL FOR
THE SOCIAL WELFARE (RECIPROCITY WITH AUSTRALIA) ORDER 2017**

Proposal

- 1 I propose that the Cabinet Legislation Committee authorise the submission to the Executive Council of the Social Welfare (Reciprocity with Australia) Order 2017 (the 2017 Order).

Policy

- 2 The 2017 Order, which will be made under section 19 of the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990, implements in New Zealand law the revised Agreement on Social Security between the Government of Australia and the Government of New Zealand (the Australian Agreement).
- 3 On 2 November 2016, the Social Policy Committee approved the text of the revised Australian Agreement and agreed that New Zealand should sign this Agreement [Cab Min SOC 16-0149 refers]. The Australian Agreement was signed in New Zealand on 8 December 2016.
- 4 Social security agreements are bilateral treaties which provide for the reciprocal payment of social security benefits and pensions. They allow the costs of benefits and pensions to be mutually shared by modifying barriers in domestic legislation, such as residence rules, that would otherwise prevent payment. They also allow qualifying periods in one agreement partner country to be counted as qualifying periods in the other agreement partner country.
- 5 Social security agreements between Australia and New Zealand date back to 1948. The most recent Agreement on Social Security between the Government of New Zealand and the Government of Australia was signed in 2001 (the 2001 Agreement) and was implemented on 1 July 2002.
- 6 The main provisions of the 2001 Agreement set out the following:
 - the authority to pay benefits and pensions in the partner country (New Zealand benefits covered under the Australian Agreement are New Zealand Superannuation, Veteran's Pension and Supported Living Payment (for the severely disabled); the Australian benefits covered are the Australian Old Age Pension and Disability Support Pension (for the severely disabled))
 - provisions for information sharing between the parties so that correct benefit and pension entitlement can be determined
 - rules establishing how the residency requirements for both countries will be treated
 - the formula for the calculation that determines the benefit and pension rate each individual is to receive.
- 7 The main provisions of the recently signed Australian Agreement (the 2016 Agreement) are the same as those in the 2001 Agreement. However, the 2016 Agreement differs from the

2001 Agreement in that some outdated provisions have been updated and some errors and anomalies have been corrected. In addition, changes have been made to ensure the Australia Agreement is up to date in light of changes to the New Zealand legislation around civil unions and same sex couples.

- 8 A further change responds 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. Under the 2001 Agreement, the difference in pension ages could have resulted in additional expenditure on New Zealand Superannuation¹ (NZS) of \$42.9 million per year. This additional expenditure could arise as a result of people applying for NZS at age 65 rather than waiting until they are the qualifying age for the Australian Age Pension. The 2017 Order proposes that people applying for NZS under the Agreement will only be eligible if they meet the age of eligibility for Australian Age Pension. Updating the 2001 Agreement will make it easier to administer and will prevent potential additional expenditure on NZS of \$42.9 million per year.

Timing and 28-day rule

- 9 The 2017 Order will come into force 28 days after its publication in the *Gazette* meeting the 28-day rule. New Zealand and Australia are aiming to bring the Australian Agreement into force on 1 July 2017. The Australian Agreement provides that it will come into effect on 1 July 2017, provided that the Governments of Australia and New Zealand 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 the 2017 Order shall come into force on the first day of the third month following the date of the last such notification.

Compliance

- 10 The 2017 Order complies (where applicable) with:
- a. the principles of the Treaty of Waitangi
 - b. rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993
 - c. principles and guidelines set out in the Privacy Act 1993
 - d. relevant international standards and obligations, and
 - e. LAC Guidelines: Guidelines on Process and Content of Legislation, a publication by the Legislation Advisory Committee.

Regulations Review Committee

- 11 There are no grounds for the Regulations Review Committee to draw the 2017 Order to the attention of the House under Standing Order 315.

Certification by Parliamentary Counsel

- 12 The 2017 Order in Council has been certified by Parliamentary Counsel as being in order for submission to Cabinet and the Executive Council.

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.

Regulatory impact analysis

- 13 A Regulatory Impact Statement was prepared in accordance with the necessary requirements and was submitted at the time that Cabinet approval was sought for the signing of the Australian Agreement [Cab Min SOC 16-0149 refers].

Publicity

- 14 Public information on the Ministry of Social Development website will be updated to reflect the changes brought about by the Australian Agreement. Similar changes will be made to information on the Australian Department of Human Services website.
- 15 Although beyond the scope of the Australian Agreement, the wider rights and entitlements of New Zealanders in Australia is a matter of ongoing public interest. The New Zealand Government has raised these matters with the Australian Government which has resulted in the Pathway to Citizenship announcement by Prime Minister Malcolm Turnbull. Gazetting regulations implementing the amendments to the Australian Agreement may see further media questions and comment on the rights and entitlements of New Zealanders.
- 16 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 Australian 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 Australian Agreement
 - the 2001 Australian Agreement currently covers long-term entitlements such as age and disability and this coverage will not change
 - the 2001 Australian 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.

Consultation

- 17 The Ministry of Foreign Affairs and Trade and the Treasury have been consulted. The Department of Prime Minister and Cabinet has been informed.

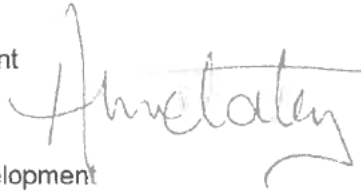
Recommendations

- 18 It is recommended that the Committee:
- 1 **note** that an Order in Council under section 19 of the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990, is required to give effect in New Zealand law to the revised Social Security Agreement between the Government of Australia and the Government of New Zealand, signed in New Zealand on 8 December 2016 (the Australian Agreement)
 - 2 **authorise** the submission to the Executive Council of the Welfare (Reciprocity with Australia) Order 2017 to give effect to the Australian Agreement

- 3 **note** that, subject to the promulgation of the Order in Council, the revised Social Security Agreement between Australia and New Zealand will enter into force on 1 July 2017, provided that the Governments of Australia and New Zealand 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 the Order shall come into force on the first day of the third month following the date of the last such notification.

Authorised for lodgement

Hon Anne Tolley
Minister for Social Development



RELEASED UNDER THE
OFFICIAL INFORMATION ACT

IN CONFIDENCE

Social Welfare (Reciprocity with Australia) Order 2017

Governor-General

Order in Council

At Wellington this day of 2017

Present:
in Council

This order is made under section 19 of the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990 on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Social Development (made after the Privacy Commissioner had presented to the Minister for Social Development and the Minister of Justice a report on the matters referred to in subsection (2A) of that section).

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Agreement on Social Security between the Government of Australia and the Government of New Zealand entered into at Wellington on 8 December 2016	

Schedule 3
Exchange of diplomatic notes

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Order

1 Title

This order is the Social Welfare (Reciprocity with Australia) Order 2017.

2 Commencement

This order comes into force on 1 July 2017.

3 Transitional, savings, and related provisions

The transitional, savings, and related provisions (if any) set out in Schedule 1 have effect according to their terms.

4 Agreement adopted

The provisions of the Agreement on Social Security between the Government of Australia and the Government of New Zealand, entered into at Wellington on 8 December 2016 and set out in Schedule 2 (the **Agreement**), as corrected in accordance with Article 79(1)(b) of the Vienna Convention on the Law of Treaties by an exchange of the diplomatic notes between the Government of New Zealand and the Government of Australia set out in Schedule 3, have force and effect so far as they relate to New Zealand.

5 Modification of enactments

The provisions of the following enactments have effect subject to the modifications that may be required for the purpose of giving effect to the Agreement as corrected:

- (a) the New Zealand Superannuation and Retirement Income Act 2001;
- (b) the Social Security Act 1964;
- (c) the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990;
- (d) Part 6 of the Veterans' Support Act 2014;
- (e) the regulations and orders in force under the Acts specified in paragraphs (a) to (d).

6 Revocation

The Social Welfare (Reciprocity with Australia) Order 2002 (SR 2002/119) is revoked.

Schedule 1
Transitional, savings, and related provisions

cl 3

Part 1
Provisions relating to this order as made

There are no transitional, savings, or related provisions relating to this order as made.

Schedule 2
Agreement on Social Security between the Government of Australia
and the Government of New Zealand entered into at Wellington on
8 December 2016

cl 4

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:

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 imple-

mentation 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;
 - (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.

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;
 - (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.

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.
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.
10. 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:
 - (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:

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

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.

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.

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
 - (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,

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.

Z = 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.
- 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.

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.
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.

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 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:
 - (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.
- 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.

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.

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 Wellington on this eighth day of December 2017.

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;
 - 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 may be lawfully recovered under the laws of that country; and
- b. when providing assistance to recover any social security debt of a Party, the Party giving the assistance is not required to:
 - i. give priority to the recovery of social security debts of the other Party; and
 - ii. take any measures for recovery not provided for under the laws relating to the recovery of debts of that Party;
- c. a Party may not seek to recover a social security debt by imprisonment of the individual by whom it is owed or of any other individual;
- d. any recovery of a social security debt of a deceased individual is limited to the value of that individual's estate;
- e. any institution, court, or tribunal involved in the recovery of a social security debt may defer recovery of the debt, or may order or arrange for the debt to be paid in instalments, if:
 - i. the institution, court, or tribunal has the power to do so; and
 - ii. it is its normal practice to do so;
- f. a Party may give assistance only in respect of a social security debt that the requesting institution has certified is of a kind described in subparagraphs (i) to (iv) of paragraph (a);
- g. the Party requesting assistance to recover a social security debt must pay the costs of the other Party of recovering the debt, including court costs or other fees payable under the laws of that Party. For the purposes of this paragraph, "costs of the other Party" refer only to costs incurred (such as solicitor's fees) if court action is taken to recover the debt and do not include the administrative costs of a Party.

2. For the purpose of clause 1(a)(ii), a right of review or appeal under the law under which a debt was determined has expired:
 - a. if the right has not been exercised within the time limit provided for its exercise; and
 - b. irrespective of whether the court or tribunal or body or person that would have jurisdiction in respect of the review or appeal, or any other person, retains a discretion (however expressed in that law) to allow the right of review or appeal to be exercised after that time.
3. Where any institution, court, or tribunal defers the recovery of a social security debt, or orders or arranges for a social security debt to be paid by instalments, the 5-year period referred to in clause 1(a)(iv) is extended by the period of deferral or, as the case requires, the period over which the debt is to be paid by instalments.

Schedule 3

Exchange of diplomatic notes

cl 4

New Zealand initiating note

The New Zealand High Commission, Canberra presents its compliments to the Department of Foreign Affairs and Trade of Australia and has the honour to refer to the *Agreement on Social Security between the Government of Australia and the Government of New Zealand*, done at Wellington on 8 December 2016 (hereinafter referred to as “the Agreement”) and to subsequent discussions between the two Governments over correction of errors in the text.

The High Commission has the further honour to propose that, on the basis of the aforementioned discussions, the following corrections to the Agreement be made in accordance with Article 79(1)(b) of the Vienna Convention on the Law of Treaties:

1. Article 1(c) and 1(n)(ii) of the Agreement are corrected by deleting the references to the year “2016” and replacing it with the year “1964” so that both references now read the “Social Security Act 1964”.
2. Article 6 of the Agreement is corrected by inserting in paragraph 5, after the words “payable to”, the words “a person in”.

The High Commission has the honour to propose that, if the forgoing is acceptable to the Government of Australia, this note, and the Department’s note in reply, shall together constitute an Exchange of Notes Correcting Errors in the Agreement. The corrected text will replace the defective text.

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

New Zealand High Commission
CANBERRA

24 March 2017

Australian note in reply

The Department of Foreign Affairs and Trade presents its compliments to the New Zealand High Commission in Canberra and has the honour to refer to the latter’s note, NZHC 2017 024 seeking corrections to the *Agreement on Social Security between the Government of Australia and the Government of New Zealand* (the “agreement”) done at Wellington on 8 December.

The Department of Foreign Affairs and Trade of Australia has the further honour to advise that the request is acceptable to the Government of Australia and that, accordingly, the High Commission's note and this note in reply shall together constitute an Exchange of Notes correcting errors in the agreement.

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

Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on 1 July 2017, gives effect to the Agreement on Social Security between the Government of Australia and the Government of New Zealand entered into on 8 December 2016 (the **Agreement**) as corrected by a subsequent exchange of diplomatic notes between the Government of New Zealand and the Government of Australia.

The Agreement deals with matters relating to the payment of specified social security benefits, provided for under the laws of both countries, to people who move between New Zealand and Australia. It updates and replaces the Agreement on Social Security between the Government of New Zealand and the Government of Australia, entered into on 28 March 2001, particularly to reflect—

- changes to New Zealand legislation relating to civil unions and same-sex couples; and
- the increase in the eligibility age for the Australian age pension from 65 to 67, which starts on 1 July 2017, while the eligibility age for New Zealand superannuation remains at 65. To take account of the resulting 2-year difference in the pension eligibility ages between the 2 countries, the Agreement has the effect that Australian residents applying under the Agreement will be eligible for New Zealand superannuation only if they meet the eligibility age for the Australian pension.

The order revokes the Social Welfare (Reciprocity with Australia) Order 2002 (SR 2002/119).

Regulatory impact statement

The Ministry of Social Development produced a regulatory impact statement on 25 October 2016 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <http://www.msd.govt.nz/about-msd-and-our-work/publications-resources/regulatory-impact-statements/index.html>
- <http://www.treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*

This order is administered by the Ministry for Social Development.

RELEASED UNDER THE
OFFICIAL INFORMATION ACT

Aide-mémoire



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

Cabinet paper

Date: 28 April 2017

Security Level: Cabinet Sensitive

For: Hon Anne Tolley, Minister for Social Development

File Reference: A9605555

Social Security Agreement between New Zealand and Australia: Approval for the Order in Council

**Cabinet
Committee**

Cabinet Legislation

Date of meeting

4 May 2017

Minister

Hon Anne Tolley, Minister for Social Development

Proposal

The paper seeks approval for the Order-in-Council that will bring the revised Social Security Agreement that has been agreed between New Zealand and Australia (the Agreement) into effect.

Key issues

Social security agreements between Australia and New Zealand date back to 1948. The current Agreement was signed in 2001.

**The key amendment to the Agreement will align the ages
of entitlement for age-related pensions**

The age at which New Zealand Superannuation (NZS) is payable under the Agreement will be aligned with the Australian Age Pension age which is gradually increasing from 65 years to 67 years between 2017 and 2023.

This amendment will mean that, where people need to use the Agreement to meet the residence criteria for NZS (eg New Zealanders living in Australia or Australians living in New Zealand), they will not be able to get NZS until they reach the age of entitlement to the Australian Age Pension.

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.

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 between the ages of 65 and 67 with an associated cost of \$42.9 million per year.

Other amendments will address errors and anomalies

The other amendments are technical. These amendments will update provisions which are out of step with New Zealand and Australian legislation and will correct some errors and anomalies including:

- making the Agreement consistent with the New Zealand Civil Union Act 2004 because, for payment purposes, it does not currently treat civil union and unmarried same sex couples in the same way as legally married couples
- allowing New Zealand officials to make their own decisions about whether a person was residing in Australia or elsewhere. Currently, if Australian officials consider a person is residing in Australia, New Zealand officials are required to do so as well
- Article 26 of the 2001 Agreement will be removed. This article required the New Zealand Government to continue to reimburse the Australian Government for the cost of benefits paid to New Zealanders under the 1994 Agreement. Reimbursement of these benefits has now been phased out so this Article is no longer required
- updating the names of the Australian and New Zealand government departments responsible for administering the Agreement
- updating the benefit name from Invalids Benefit to Supported Living Payment throughout the Agreement.

Our advice

The amendments will not alter the fundamental nature of the 2001 Agreement nor extend the existing benefit coverage from that currently provided (age and disability-related benefits).

This benefit coverage is consistent with the normal approach to modern social security agreements which is to provide benefit coverage for long-term entitlements (as opposed to short-term benefits such as unemployment and sickness-related benefits).

Author: § 9(2)(a) OIA Senior Policy Analyst, Seniors, International and Disability

Responsible manager § 9(2)(a) OIA Policy Manager, Seniors, International and Disability



Cabinet Legislation Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Revised Social Security Agreement with Australia: Approval for the Social Welfare (Reciprocity with Australia) Order 2017

Portfolio Social Development

On 4 May 2017, the Cabinet Legislation Committee:

- 1 **noted** that an Order in Council under section 19 of the Social Welfare (Reciprocity Agreements, and New Zealand Artificial Limb Service) Act 1990, is required to give effect in New Zealand law to the revised Social Security Agreement between the Government of Australia and the Government of New Zealand, signed in New Zealand on 8 December 2016 (the Australian Agreement);
- 2 **authorised** the submission to the Executive Council of the Social Welfare (Reciprocity with Australia) Order 2017 [PCO 20328/5.0] to give effect to the Australian Agreement;
- 3 **noted** that the Social Welfare (Reciprocity with Australia) Order 2017 comes into force on 1 July 2017;
- 4 **noted** that the revised Social Security Agreement between Australia and New Zealand will enter into force on 1 July 2017, provided that the Governments of Australia and New Zealand have notified each other by notes exchanged through the diplomatic channel that all matters necessary to give effect to this Agreement have been completed;
- 5 **noted** that, if the notes are not exchanged through the diplomatic channel by 1 July 2017:
 - 5.1 the 2017 Order shall come into force on the first day of the third month following the date of the completion of the exchange of diplomatic notes;
 - 5.2 no further action following the completion of the exchange of notes is required to enable the Order to take effect.

Vivien Meek
Committee Secretary

Hard-copy distribution (see over)

IN CONFIDENCE

LEG-17-MIN-0045

Present:

Hon Simon Bridges (Chair)
Hon Michael Woodhouse
Hon Paul Goldsmith
Hon Mark Mitchell
Hon Jacqui Dean
Hon Peter Dunne
Jami-Lee Ross

Officials present from:

Hard-copy distribution:

Minister for Social Development

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