

AGREEMENT ON SOCIAL SECURITY

**BETWEEN**

**THE GOVERNMENT OF AUSTRALIA**

**AND**

**THE GOVERNMENT OF NEW ZEALAND**

The Government of Australia, and

The Government of New Zealand

Referred to in this Agreement as “the Parties”

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

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

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

HAVE agreed as follows:

## PART I

### DEFINITIONS AND SCOPE

#### ARTICLE 1

##### Definitions

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

- (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.
9. A person who is ordinarily resident in Australia and is married, in a civil union, or in a de facto relationship, is not entitled to receive, or continue to receive, a supported living payment if both the person and his or her spouse or partner have reached pension age.

## **ARTICLE 7**

### **Presence in New Zealand**

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

## **ARTICLE 8**

### **Totalisation for New Zealand**

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

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

## ARTICLE 9

### **Rate of New Zealand Superannuation and Veterans' Pensions in Australia**

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

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

540

subject to the following provisions:

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

## 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:

$$A = ((540 - Z) \times R) / 540$$

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:

$$A = W \times R / 540$$

where,

A = rate payable.

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

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

5. 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:

$$A = (L \times R) / (N + L)$$

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 ..... on this ..... day of ..... 20.....

**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 was first found or determined to be owing less than 5 years prior to the date that the request for assistance is made, except as provided in clause 2;
  - b. when providing assistance to recover any social security debt of a Party, the Party giving the assistance is not required to:
    - i. give priority to the recovery of social security debts of the other Party; and
    - ii. take any measures for recovery not provided for under the laws relating to the recovery of debts of that Party;
  - c. a Party may not seek to recover a social security debt by imprisonment of the individual by whom it is owed or of any other individual;
  - d. any recovery of a social security debt of a deceased individual is limited to the value of that individual's estate;
  - e. any institution, court, or tribunal involved in the recovery of a social security debt may defer recovery of the debt, or may order or arrange for the debt to be paid in instalments, if:
    - i. the institution, court, or tribunal has the power to do so; and

- ii. it is its normal practice to do so;
  - 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.