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SOCIAL SECURITY AMENDMENT (RECIPROCITY WITH  
ITALY) BILL 1986

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Social Security,  
the Hon Brian Howe MP)



## OUTLINE

This Bill provides for the introduction into Australian law of the reciprocal agreement between Australia and Italy on social security.

The purpose of the Agreement, as set out in its preamble, is to:

- . co ordinate the social security systems of Italy and Australia; and
- . enhance the equitable access to social security benefits by people who move between the two countries.

The Agreement is designed to operate on and complement the social security systems of each country:

- . in Australia, the social security system is needs based and provides for indexed flat-rate pensions which are subject to income and assets tests; and
- . in Italy, the social security system is contribution based. The rates of benefits are calculated on the basis of the period during which contributions were made and the applicable salary.

Under the Agreement, each country will provide a share of an individual's complete pension entitlement.

While both systems broadly provide coverage for similar contingencies (age, invalidity, widowhood, etc,) they do so in very different ways, with different eligibility criteria for the main benefits and different treatment for the dependants of beneficiaries and their survivors.

To provide an equitable basis for reciprocity, Australia has, under the Social Security (Proportional Portability of Pensions) Amendment Act 1986, modified Australia's domestic law, the Social Security Act 1947, to provide that Australian pensions payable outside Australia will be calculated with regard to a person's length of residence during working life in Australia ("proportional portability"). The Amendment Act came into operation on 1 July 1986.

The Agreement was negotiated on the basis of this change. It will enable Australia's portable pension system to be better aligned with the Italian system insofar as periods of residence in Australia will more readily equate with periods of contributions in Italy and vice versa.

That Act provides that invalid and widows pensions paid as a result of the occurrence of the qualifying event in Australia will not be subject to proportional portability. It also provides that residents of Australia on 8 May 1985 who qualify for pension and leave Australia before 1 January 1996 will not be subject to proportional portability. The Agreement also embodies these rules.

As this Agreement will modify and adapt the Social Security Act 1947, this memorandum also explains the way in which the Act will be modified and adapted.

Some minor amendments would be made to the Social Security Act 1947 to facilitate the integration of the Agreement with the Act.

# FINANCIAL IMPACT

The financial impact of the proposed amendments in the years 1987/88, 1988/89 and 1989/90 will not be of great significance. There will be increased payments into Australia. Estimates are as follows:

	1987/88	1988/89	1989/90
	\$m	\$m	\$m
Cost of Italian Agreement	4.6	5.5	6.4
Tax revenue from Italian Agreement	<u>5.3</u>	<u>5.6</u>	<u>5.8</u>
Financial impact	0.7 (savings)	0.1 (savings)	0.6 (cost)
Additional payments into Australia	38.3	40.2	42.2
Additional payments out of Australia	<u>3.1</u>	<u>3.7</u>	<u>4.3</u>
Net inflow to Australia	35.2	36.5	37.9

## SOCIAL SECURITY AMENDMENT (RECIPROCITY WITH ITALY) BILL 1986

### Clause 1: Short title, &c.

This clause would provide that the amendment Act could be cited as the Social Security Amendment (Reciprocity with Italy) Act 1986, and that in the amendment Act the Social Security Act 1947 would be referred to as the Principal Act.

### Clause 2: Commencement

This clause would provide for the commencement of provisions of the amendment Act.

Clause 2(1) would provide that the amendment Act would come into operation on the day that it receives the Royal Assent, subject to clause 2(2).

Clause 2(2) would provide that clauses 5 and 6 would come into operation on 1 July 1986, when the Social Security (Proportional Portability of Pensions) Amendment Act 1986 came into operation. Although clauses 5 and 6 would commence retrospectively, the amendments would not disadvantage anyone and the proportional portability arrangements would then operate as intended.

The Agreement itself specifies how it will come into force (see Article 23).

### Clause 3: Interpretation

Sub-section 6(1) of the Principal Act provides for definitions of terms used in the Principal Act, including a definition of "income".

Clause 3(b) would amend the definition of "income" to exempt a payment which, by virtue of a reciprocal agreement, is directly deducted from an Australian social security payment.

This reflects the rules in Article 8 of the Agreement (paragraphs (1) and (6)) which require the disregarding as income of an Italian benefit that is to be directly deducted from an Australian benefit under the Agreement.

The amendment will enable future agreements to be simpler in this respect. It will also apply to enable a foreign pension which is subject to the direct deduction rule to be disregarded as income for all purposes of the Principal Act, eg for the purposes of section 83CA of the Principal Act. Section 83CA provides the income test applied to funeral benefit entitlement, which is also the income test applied for Commonwealth pensioner health benefits, ie eligibility to the pensioner health benefits (PHB) card. The PHB card is the passport, in practice, to "fringe benefits".

Clause 3(a) would make a consequential amendment to the definition of "income".

By clause 2(1), the amendment would come into operation on the day on which the Bill receives the Royal Assent.

#### Clause 4: Insertion of heading

This clause would insert a heading in Part IVAA of the Principal Act. The heading "Portability of Pensions" would reflect the current provisions of that Part.

By clause 2(1), the amendment will come into operation on the day on which the Bill receives the Royal Assent.

#### Clause 5: Interpretation

Sub-section 83AA(2) provides a rule of interpretation for the purposes of Part IVAA of the Principal Act, which enables the longer period of residence in Australia of a person and the spouse of the person to be taken into account where each is either an age or an invalid pensioner.

The rule does not cover the case where such a person ceases to be a married person, eg due to death, divorce or permanent separation.

This clause would substitute a new sub-section 83AN(2) to cover this case. In effect, the rate of payment to a person who has become an unmarried person would not be reduced by reason only of that change in status.

By clause 2(2), this clause would come into operation on 1 July 1986, when the current regime of proportional portability came into operation.

#### Clause 6: Rate of pension payable outside Australia

This clause would make drafting changes to section 83AC of the Principal Act to remove technical anomalies.

By clause 2(2), this clause would come into operation on 1 July 1986, when the current regime of proportional portability came into operation.

#### Clause 7: Insertion of new Division

This clause would insert a new Division 2 in Part IVAA of the Principal Act. Division 2 will deal with new reciprocal agreements which are related to the principle of proportional portability.

The new Division 2 is made up of section 83AG.

Sub-section 83AG(1) defines "reciprocal agreement" to be an agreement between the Commonwealth (ie Australia) and a foreign country on reciprocal social security matters, where the agreement is set out in the Schedule to the Principal Act.

Sub-section 83AG(2) provides that when a "reciprocal agreement" comes into force, the agreement has effect notwithstanding anything in the Principal Act.



In effect, The Principal Act and an agreement are to be read together, with the agreement to prevail where there is an inconsistency.

By clause 2(1), the new Division 2 would come into operation on the day on which the Bill receives the Royal Assent.

#### Clause 8: Addition of Schedule

This clause would add a Schedule dealing with reciprocal agreements to the Principal Act.

The Schedule would contain the Agreement between Australia and Italy.

## SCHEDULE

### Reciprocal agreements

Agreement between Australia and the Republic of Italy providing for reciprocity in matters relating to social security

#### PART I - INTERPRETATION AND SCOPE

##### Article 1: Interpretation

The terms defined in paragraph 1 are key terms that occur frequently in the Agreement and have been defined to ensure they are consistently used and to avoid the need to give their meaning each time they are used in the text.

The terms "spouse carer's pension" and "widow" are specifically defined for the purposes of the Agreement. Under the Social Security Act 1947, a carer's pension is paid to a person who provides constant care and attention for a severely handicapped relative but under the Agreement qualification for this benefit is restricted to a husband who cares for a severely handicapped wife. A "widow" under the widow's pension provisions of the Social Security Act 1947 is defined to include a woman who was a partner to a de facto marriage, whose legal marriage has been dissolved or whose husband is in prison. Under the Agreement a "widow" refers only to a woman whose de jure husband has died.

Paragraph 3 provides that the terms used in the Agreement have their ordinary meaning under the social security legislation of Australia or Italy, except those defined in paragraph 1 or where the context of the Agreement requires a different meaning.

## Article 2: Legislative Scope

Paragraphs 1 and 2 set out the legislation to which the Agreement applies and specifically identify the payments which are covered. The legislation is that which is in force at the date of signing the Agreement and includes any amendments to that legislation after the Agreement comes into force. The legislation does not include any laws giving effect to such social security agreements.

The purpose of excluding agreements is to prevent periods of deemed residence or deemed contributions under those agreements from being taken into account under this Agreement.

Under paragraph 3, each country is required to notify the other of any changes to its legislation which affect the Agreement. (Provision is made in Article 22 for updating or renegotiating aspects of the Agreement as necessary.)

## Article 3: Personal Scope

This Article specifies the category of people to whom the Agreement applies, viz people who move between Italy and Australia and who are or have been resident in Australia, or have contributed to the Italian Social Security System.

Under this Article the Agreement also applies to any dependants and survivors of these people.

This Article also allows the Agreement to apply to other people who are citizens of either country (Article 4) or where it is necessary to exchange information about them (Article 20).

#### Article 4: Equality of Treatment

Most income security systems differentiate between citizens and non-citizens, and reciprocal social security agreements typically include a provision which ensures the equality of treatment between the citizens of the agreement partners. Although Australian social security law relevant to this Agreement does not use citizenship as an entitlement criterion, Italian social security law relevant to this Agreement does in regard to payments outside Italy. This Article enables Italy to overcome this limitation in so far as Australian citizens are concerned.

This Article also ensures that the Contracting Parties give equal treatment to persons to whom the Agreement applies as set out in Article 3 in relation to rights and obligations arising under the Agreement. Those persons need not necessarily be citizens of either Australia or Italy, but they would have met one or other of the qualifications set out in Article 3.

PART II - RESIDENCE OR PRESENCE OUTSIDE AUSTRALIA FOR

PURPOSES OF QUALIFYING FOR AUSTRALIAN BENEFITS

Article 5: Residence or Presence in Italy

The Social Security Act 1947 requires a person to be physically present and residing in Australia at the date of lodgment of a claim for an Australian pension. This Article deems persons who are physically present and residing in Italy, or physically present in one country and residing in the other, to be physically present and residing in Australia for the purposes of lodging a claim.

This provision thus enables those Australian pensions that fall within the scope of this Agreement to be granted to such people. Italy is already able to grant its pensions in Australia, so a separate provision for Italy is not required for this purpose.

Article 6: Residence or Presence in a Third Country

This Article extends the scope of Article 5 to a third country provided that country has a reciprocal agreement with Australia which enables that country to assist Australia in the assessment and determination of a claim for an Australian pension under this Agreement.

It does this through a similar deeming provision to that contained in Article 5 and is intended to have a similar result, ie it is possible under the Agreement to grant Australian pensions to residents of Australia, Italy or a third country who are physically present in that third country, if an appropriate agreement exists between Australia and that country.

### PART III - TOTALISATION AND PRO-RATA BENEFITS

#### Article 7 - Totalisation of Periods of Residence and Periods of Contribution

Paragraph 1 provides for the process of totalisation. This process is the internationally accepted method for enabling people to meet the minimum requirements for the grant of a pension by each of the Agreement partners if they do not already meet these requirements in their own right. In this regard:

- (a) Italy recognises a person's periods of Australian residence during working life as equivalent to periods of contributions to the Italian system to determine whether or not the claimant satisfies the requirements for the minimum periods of contributions set out in the Italian legislation. These minimum periods of contributions are for:
  - (i) old age pension - 15 years;
  - (ii) seniority pension - 35 years;
  - (iii) anticipated pension - 15 years;
  - (iv) invalidity allowance - 5 years;
  - (v) inability pension - 5 years;
  - (vi) privileged invalidity allowance - 1 year;
  - (vii) privileged inability pension - 1 year;
  - (viii) survivors pension - 5 years contributions by the deceased; and
  - (ix) unemployment allowance - 2 years.

The "period of Australian residence during working life" is defined in Article 1 as the period between the age of 16 years and Australian age pension age, ie 60 years for a woman and 65 years for a man.

(b) Australia recognises a person's periods of contributions to the Italian system as periods of residence in Australia to determine whether or not the claimant satisfies the minimum requirements for periods of residence set out in the Social Security Act 1947. The minimum periods of residence required are:

- (i) age pension - 10 years continuous residence;
- (ii) invalid pension - 10 years continuous residence unless the event giving rise to invalidity occurred during a period of residence in Australia. In this latter case no previous residence is required;
- (iii) pensions payable to widows - 5 years residence immediately before the claim or 10 years continuous residence at any time or no previous residence requirement if the death of the husband occurred during a period when both the widow and the husband in respect of whom she became a widow were residing permanently in Australia;
- (iv) wife's pension - no specific residence requirement;
- (v) double orphan's pension - no specific residence requirement; and
- (vi) spouse carer's pension - no specific residence requirement.

In the case of age and invalid pensions, special provisions exist in the event residence is not continuous. In effect, these provisions require a period of at least 5 years continuous residence supplemented by a further period or periods to bring the total period of residence to at least 10 years.

There are breaks in periods of Italian contributions because the employment history of people often involved changes in occupation or employer. This Article provides in paragraph 2 that periods of contributions in Italy are deemed to be continuous for the purpose of qualifying for an Australian benefit by totalisation.

Paragraph 3 addresses those periods when residence in Australia and contributions in Italy have occurred at the same time, for example when a person beginning residence in Australia continues to pay Italian contributions for a period. This type of occurrence is very common when people move between countries and is usually handled under reciprocal social security agreements by what is referred to as "overlapping contributions provisions". The usual solution, which is adopted here, is to allow the overlap period to be counted only once by each country.

To avoid claims from people who have had very brief periods of residence or contributions and who would be entitled to very small or insignificant pensions, it is necessary to set minimum periods for totalisation. These are set out in paragraph 4 for Australia, and require a minimum period of residence in Australia of 12 months of which at least 6 months must be continuous for payment of a pension to a person outside Australia. For payment of a pension to a person in Australia there is no minimum requirement.

In respect of Italy, the minimum period of contributions is set out in paragraph 5 and is twelve months except in the case of seniority pensions where the minimum is 15 years. Italy was not prepared to drop this minimum below 15 years. Seniority pensions are payable outside Italy after 35 years of contributions.



There is provision under Italian legislation for people who have met a minimum period of contributions (12 months) to pay voluntary contributions to bring them up to a higher level of pension. Paragraph 6 enables periods of Australian residence during working life to be recognised as a period of Italian contributions to meet the minimum requirement for entitlement to pay voluntary contributions.

#### Article 8: Australian Pro-rata Benefits

This Article contains the provisions which, when read with the Social Security Act 1947, determine the rate of pensions which are payable by Australia under the Agreement. The Article provides for three different methods of calculating rates - one applicable to persons in Australia, one applicable to persons outside Australia and one applicable to those persons who will not be subject to proportionality rules under the Social Security (Proportional Portability of Pensions) Amendment Act 1986. All methods apply in modified form the provisions for calculating the rates of pensions contained in the Social Security Act 1947.

Sub-paragraph 1(a) sets out the method of calculating the rate of agreement pension that is payable to a claimant outside Australia. This involves three steps in addition to those required to calculate the rate of Australian pension under the Social Security Act 1947. These are:

##### Step 1

In applying the income test, any supplement paid by Italy to raise the level of its pension to the Italian minimum level is deducted from the amount of Italian pension taken into account as income for the purposes of that test.

## Step 2

A proportion of the remaining Italian pension is then calculated on the basis of the length of residence during working life the person concerned has had in Australia up to a maximum of 25 years. Accordingly, if a person has had twenty years working life in Australia, during the standard working life of 25 years, the amount of Italian pension to be taken into account is 20/25 of the amount of Italian pension remaining after Step 1.

Steps 1 and 2 assist pensioners who also have pension income from Italy by reducing the amount of that Italian pension taken into account.

After Steps 1 and 2 have been completed, the rate of Australian pension is then calculated in the normal way having regard to other income or assets, whether the person is to be paid at the married rate or single rate and whether there are any dependants.

## Step 3

A proportion is then taken of the applicable rate of Australian pension on the same basis as in Step 2, viz the length of residence during working life the person concerned has had in Australia up to a maximum standard working life.

The purpose of the method set out in the Agreement is that as far as possible a long-term resident of Australia living outside Australia, who could only expect to receive a small pension from Italy will receive a full or close to full pension from Australia. On the other hand a short-term resident of Australia who would be more likely to obtain a full or close to full pension from Italy, will receive only a small pension from Australia.

Paragraph 2 places a ceiling on the rate of payment to be made outside Australia under sub-paragraph 1(a). That rate cannot exceed the rate that would have otherwise been payable in Australia.

Sub-paragraph 1(b) sets out the method of calculating the rate of Agreement pension that is payable within Australia. This involves two steps in addition to those required to calculate the rate of Australian pension under the Social Security Act.

#### Step 1

In applying the income test any Italian pension paid, including any supplement, is disregarded.

The rate of Australian pension is then calculated in the normal way having regard to other income and assets, whether the person is to be paid at the single or married rate and whether there are any dependants. Supplements payable to certain pensioners such as remote area allowance and rent assistance are payable within Australia in accordance with Article 10.

## Step 2

The amount of Italian pension (including the supplement) disregarded in Step 1 is then directly deducted from the amount of Australian pension payable after the normal income test or assets test has been applied.

As a full Italian pension (including any supplement) is taken into account under the method set out in sub-paragraph 1(b) it is possible, in cases where the Italian pension is large, that the amount of Australian pension calculated under this sub paragraph is less than the amount of Australian pension that would be payable outside Australia under the method set out in sub-paragraph 1(a). To avoid a situation where a pensioner would receive a greater Australian pension outside than within Australia, paragraph 3 places a minimum on the amount of pension payable under sub-paragraph 1(b), viz the rate of payment that would be payable outside Australia under sub-paragraph 1(a).

Paragraph 4 provides for the annual monitoring of the rate calculated under paragraph 3.

Paragraph 5 makes provision for the period of residence to be taken into account in the case of married pensioners and widows to be determined in accordance with sub-sections 83AA(2), (3) or (4) of the Social Security Act 1947, inserted by the Social Security (Proportional Portability of Pensions) Amendment Act 1986 (which would be amended by clauses 5 and 6 of the Bill). These provisions will allow the longer period of residence of a person or his or her spouse to be used to calculate the proportion of Australian benefit which is payable.

Paragraph 6 makes provision for the way any Italian pension income is brought to account in cases where the Italian pension is received by one or other or both of a married couple and, by paragraph 7, de facto spouses. In these cases, each partner would be treated as receiving one-half of their total Italian pension.

Paragraph 8 ensures that invalids and widows who qualify for Australian benefit by reason of the qualifying event having occurred in Australia (sub-paragraphs (a) and (b)), and people who were living in Australia at 8 May 1985 and who claim pension and leave Australia before 1 January 1996 (sub-paragraph (c)), will not be subject to proportional portability. This reflects the concession made in the Social Security Act 1947 by the Social Security (Proportional Portability of Pensions) Amendment Act 1986.

Paragraph 9 ensures that pensioners who receive an Agreement pension in Australia by virtue of sub-paragraph 1(b) and paragraph 3 and who leave Australia but who would otherwise be saved by sub-paragraph 8(c) from proportional portability, will continue to receive a pension rate calculated under sub-paragraphs 1(b) and paragraph 3 rather than reverting to a full rate of Australian pension which is not subject to proportional portability.

#### Article 9: Italian Pro-Rata Benefits

This Article contains the provisions which, when read with Italy's domestic social security legislation, determine the rate of Italian pensions payable under the Agreement.

The method used by Italy is referred to as the "theoretical benefit" approach.

Under Italian law the rate of benefit payable is calculated by taking 2% of the reference salary multiplied by the period of contributions up to a maximum of 40 years. The reference salary is derived from the salary payable to the person concerned before he or she became eligible for a pension, and is indexed for inflation.

Sub-paragraph 1(a) provides that periods of residence in Australia and periods of contributions in Italy can be added together and if the result is greater than the relevant Italian minimum period (15 years for age pension, 35 years for seniority pension, etc) a theoretical pension is calculated as above. This payment is "theoretical" because it is not actually paid to the pensioner and only serves as a basis for the next two steps.

Italian domestic legislation also guarantees the payment of a minimum pension. Under those provisions, if the rate of theoretical pension is less than this minimum, the theoretical amount would be increased to the minimum level. This increase is a theoretical "supplement".

Sub-paragraph 1(b) then provides that the rate of Italian pension that would be payable under the Agreement is calculated by taking a proportion of the theoretical amount, increased if necessary in accordance with the previous paragraph. The proportion is calculated by multiplying this adjusted theoretical amount by the period of actual contributions and dividing by the aggregate of the periods of residence and periods of contributions. The amount that would be payable to a person thus reflects the proportion of the person's periods of contributions to the total of that period and of his or her Australian residence.

Again, Italy's provision for minimum pensions applies so this figure would be topped up to a minimum level if necessary.

Paragraph 2 provides that, for the purposes of sub-paragraph 1(b), the aggregate of periods of Italian contributions and Australian residence would not exceed the Italian maximum, currently 40 years.

Paragraph 3 provides that the "reference salary" used in calculating the level of Italian pension under the Agreement is to be based on the person's actual salary when paying contributions - not salary received during any period of residence in Australia which is deemed by Article 7 to be a period of contributions.

#### PART IV - PROVISIONS CONCERNING BENEFITS

##### Article 10: Payment of Supplementary and Additional Amounts

This Article provides that any supplements and additional payments which are normally payable under each country's social security system will flow on to people whose pension entitlement is based on this Agreement (subject, of course, to all provisions of the respective domestic legislation).

##### Article 11: Unemployment Allowance

This Article provides that periods of employment in Australia by citizens of either country can be combined with periods of Italian contributions, where contributions have been made for at least one year, for the purposes of claiming Italian unemployment benefit.

As the Social Security Act 1947 provides that Australian unemployment benefit can be paid on arrival to people who are likely to remain permanently in Australia, there is no need for a reciprocal provision.

##### Article 12: Double Orphan's Pension

This Article provides that an Australian double orphan's pension payable in Australia is portable to Italy. Italy pays a "survivors" pension to its orphans and such payments are already portable to Australia.

As Australian social security law provides that double orphan's pension is payable to the person who receives family allowance in respect of that child, the Agreement modifies this provision by making double orphan's pension payable in Italy to the person who has the custody, care and control of the child, regardless of whether Australian family allowance is payable to that person.



### Article 13: Family Allowance

This Article equates Italian family allowance, which is payable in respect of a dependent spouse (including a husband) and children, with Australian wife's and spouse carer's pensions and additional payments payable in respect of children.

There is no equivalent payment to Australian family allowance and accordingly there is no provision that makes this allowance payable under the Agreement.

Sub-paragraph 13(a) requires Italy to make its family allowance payments in Australia to both its citizens and Australian citizens who are otherwise eligible.

Under the Social Security Act 1947, Australian family allowance is not payable outside Australia where a payment similar to family allowance is paid in respect of the same child by another country. Sub-paragraph 13(b) ensures that Italian family allowance is not equated with Australian family allowance for this purpose.

### Article 14: Wife's Pension and Spouse Carer's Pension

Entitlement to Australian wife's and spouse carer's pension depends on the spouse of the claimant being a pensioner. This Article provides that where a wife or spouse carer derives an entitlement from a person who receives his or her pension by virtue of this Agreement, the wife or spouse carer's pension is deemed to be a pension payable by virtue of this Agreement.

This is a machinery measure to enable relevant Agreement provisions to apply to these cases.

## PART V - MISCELLANEOUS PROVISIONS

### Article 15: Lodgement of Claims

The date on which a claim for a benefit is lodged under both Australian and Italian domestic law is significant in that it affects the date from which payment can be made.

Paragraph 1 enables claims for any social security benefit specified in this Agreement whether payable by this Agreement or otherwise, to be lodged in the territory of either Agreement partner or in third countries if there is an agreement which provides for assistance in assessing and processing such claims (on the basis set out in Article 6).

Paragraph 2 deems the date lodged in any appropriate agreement country to be the date lodged in either Australia or Italy. This Article ensures that people are not disadvantaged as a result of postal delays and other difficulties in lodging a pension claim from a foreign country.

### Article 16: Determination of Claims

This Article relates to a number of circumstances and events which need to be taken into account in determining a claim for benefits under the Agreement.

Paragraph 1 provides that matters which have a bearing on entitlement (such as periods of previous residence, becoming permanently incapacitated for work, or becoming widowed, etc) that occur before the Agreement comes into effect are recognised for the purposes of the Agreement.

Paragraph 2, however, provides that the date for the commencement of payment cannot precede the date the Agreement comes into effect, and that such a date should be calculated in accordance with the relevant provisions of each country's domestic law.

Both Italy and Australia have specific income test provisions which are applied in calculating their respective rates of pension. To avoid a situation where one country has to wait for the other to grant its benefit before the country can know what "income" (including benefit) to take into account (in some cases this could develop into a deadlock), sub-paragraph 3(1) enables each country to make an assumption about the rate of payment payable by the other. This enables decisions about the pension entitlement to be made quickly by each country. It also ensures that a claimant will seek entitlement from the other country when entitlement exists, and so assist in preserving the cost-sharing basis of the Agreement.

Sub-paragraph 3(2) requires subsequent adjustment if the "assumed" payment is greater than the actual payment and sub-paragraph 3(3) enables this provision to apply to all social security payments.

Paragraph 4 provides that where one country is likely to make a payment of arrears to a person and payment of those arrears will cause an overpayment of the other country's pension, the second country can ask the other that any arrears be sent direct to it so that the overpayment can be deducted from the arrears before the balance is passed on to the pensioner. This provision assists pensioners by avoiding the incidence of large overpayments and difficulties in meeting subsequent repayments.

Article 17: Exclusion of Italian Supplement  
from Australian Income Test

This Article excludes from the Australian income test any supplement paid by Italy to top up its pension to the level of the Italian minimum pension, where the person also receives an Australian benefit as defined, whether by virtue of the Agreement or otherwise.

Article 18: Portability of Benefits

Paragraphs 1, 2 and 3 require each country to make its Agreement pensions portable anywhere in the world in accordance with its domestic law.

Paragraph 4 prohibits deduction of administrative fees and charges for payments made outside the country of origin.

Article 19: Administrative Arrangements  
and Mutual Assistance

This Article requires each party to assist the other in implementing the Agreement and in administering their respective social security laws.

Paragraph 1 requires each country to make appropriate administrative arrangements, as necessary.

Paragraph 2 requires each country to assist with administrative matters in relation to agreements with other countries.

Article 20: Exchange of Information

Australian and Italian social security legislation have very strict confidentiality requirements.

Paragraph 1 enables information which is necessary for the effective operation of each country's social security system to be passed from one country's social security authority to the other.

Provision of such information is obligatory in relation to persons falling within the personal scope of the Agreement (see Article 3) and, under paragraph 2, discretionary for persons falling outside the scope of the Agreement.

Paragraph 3 requires the country receiving the information to treat it with the same degree of confidentiality as is required under its domestic law, and paragraph 4 is a safeguarding provision to avoid situations where one Agreement partner asks the other Agreement partner for information that cannot be normally obtained legally or through its administrative practice.

Paragraph 5 provides that each Agreement partner accepts certification by the other. This is important in enabling quick decisions to be made and avoiding duplication in verification procedures.

Paragraph 6 provides that, in providing information and administrative assistance, the Agreement parties shall not charge each other for services rendered, but where a service has been provided by another person or organisation, the country requesting that service meets the costs.

#### Article 21: Appeals

Paragraph 1 provides that persons claiming a benefit under the Agreement have, to the fullest extent possible, access to the review and appeal mechanisms of the country against which the claim is made as if such a claim were made under its domestic law.

To facilitate the lodgment of appeal documents required by administrative review bodies, paragraph 2 provides that these can be lodged in either country and paragraph 3 enables the date of lodgment in one country to be treated as the date of lodgment in the other. For Australia, the administrative review body concerned is the Social Security Appeals Tribunal (SSAT).

#### Article 22: Review of Agreement

This Article sets down provisions to facilitate the updating of the Agreement. Under paragraph 1, the contracting parties are able to agree at any time to review any aspect of the Agreement. This may become necessary from time to time in the light of changes to the domestic legislation of either country or for other reasons. Where such changes have occurred, paragraph 5 enables one country to direct a committee of experts from both countries to meet to consider the effect of these changes on the Agreement.

For the first four years of the life of this Agreement, paragraph 2 provides for the setting up of a committee of experts who will meet once a year to report on the operation and effectiveness of the Agreement.

Paragraph 3 is a facilitative mechanism for the establishment of review arrangements to apply after the initial four year period, and paragraph 4 requires that detailed guidelines defining the role and method of operation of the committee of experts be set out in the Administrative Arrangement negotiated pursuant to Article 19.

## PART VI - FINAL PROVISIONS

### Article 23: Entry Into force

Paragraph 1 provides that the Agreement comes into force on the first day of the month following the exchange of instruments of ratification.

Paragraph 2 provides for the termination of the existing Agreement between Italy and Australia which was signed in 1972. This Agreement became redundant from Australia's point of view when general portability of pensions was introduced in 1973.

### Article 24: Termination

By paragraph 1, the Agreement continues in force until one party gives 12 months notice of its wish to terminate it.

Paragraph 2 contains a savings provision to ensure that those people who are receiving benefits under the Agreement or who have their claims in process of consideration at the time of termination will continue to receive those benefits after termination.

