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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

No. 81 of 1992

THE SENATE

SOCIAL SECURITY LEGISLATION AMENDMENT BILL 1992

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments and new clause to be moved  
on behalf of the Government

(Circulated by authority of the Minister for Social Security  
the Hon Neal Blewett)

33956/92 Cat. No. 92 4625 X



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## SOCIAL SECURITY LEGISLATION AMENDMENT BILL 1992

### OUTLINE AND FINANCIAL IMPACT STATEMENT

The following amendments and new clause affect the Social Security Act 1991.

They have no costs or savings additional to those specified in the explanatory memorandum to the Social Security Legislation Amendment Bill 1992 relating to the Agreement on social security between Australia and Austria.

The changes have the effect of inserting the text of the Agreement on Social Security between Australia and the Republic of Austria as a schedule to the Social Security Act 1991.

## NOTES ON AMENDMENTS AND NEW CLAUSE

### SOCIAL SECURITY ACT 1991

#### Agreement on social security between Australia and the Republic of Austria

##### Amendment 1

Clause 2(1) of the Social Security Legislation amendment Bill 1992 (the amending Bill) will be amended by the insertion of a new paragraph "(h) Schedule 3".

The effect of this amendment is that Schedule 3 of the amending Bill will commence on the day of Royal Assent.

Schedule 3 will contain the text of the Agreement on social security between Australia and Austria.

It should be noted that while the text of the Agreement will be inserted into the Act on the day of Royal Assent, the Agreement will not come into force until certain formalities contained in the Agreement have been met. The Agreement provides for an exchange of notes which will specify the day on which the Agreement comes into force.

##### Amendment 2 - new clause 81

Clause 81 of the Social Security Legislation amendment Bill 1992 (the amending Bill) , provides that an agreement on social security between Australia and the Republic of Austria is a scheduled international social security agreement for the purposes of the Act. Clause 81 was inserted in its current form because the Agreement on social security between Australia and Austria had not been signed when the amending Bill was drafted. That Agreement has since been signed and is expected to come into force on 1 October 1992 (after exchange of notes under the Agreement).

It is therefore appropriate to insert the text of that signed Agreement as a schedule to the Act.

New clause 81 will insert the text of the Agreement on social security between Australia and the Republic of Austria (contained in Schedule 3 of the amending Bill) as a schedule to the Act.

### Amendment 3

This amendment will insert a new Schedule 3 into the amending Bill. The effect of the amendment is to insert the Agreement on social security between Australia and the Republic of Austria as Schedule 11 to the Act.

The explanatory notes on the Agreement are as follows.

**AGREEMENT**

**between**

**AUSTRALIA**

**and**

**THE REPUBLIC OF AUSTRIA**

**ON SOCIAL SECURITY**

**EXPLANATORY MEMORANDUM**

## INTRODUCTION

The Agreement between Australia and the Republic of Austria on Social Security coordinates the two countries' social security schemes to provide better social security coverage for, and protect the welfare of, people who have moved between Australia and Austria.

People who have lived in more than one country often find, when they claim a pension or benefit, that they do not have enough residence or contributions under a social security scheme to qualify for payment.

To help overcome this problem, a network of social security agreements has been set up within the international community.

One of the key elements in these agreements is that the partner countries share the responsibility for social security coverage and related costs. If a person has lived and worked in two or more countries, then it is fair that each of those countries share the responsibility for supporting that person when he/she claims a pension or benefit.

In most cases, that will mean that each person will receive at least two part pensions - one from each country involved.

As a country with a large migrant population, it is very appropriate for Australia to participate in the network of international social security agreements.

The Agreement with Austria is Australia's eighth agreement of this type - similar agreements have already been concluded with Italy, Canada, Malta, Spain, The Netherlands, Ireland and Portugal.

## **PART I**

### **INTERPRETATION AND SCOPE - GENERAL PROVISIONS**

#### **ARTICLE 1 - INTERPRETATION**

**Paragraph 1** - defines the key words and expressions used in the Agreement. This is done because the meaning intended in the Agreement may be different to that in everyday usage, or because Australia and Austria may use the terms differently in their respective social security legislations.

The definitions given in this Article apply whenever these words or expressions are used in the Agreement, unless an exception is especially made somewhere in the text of the Agreement.

Most of the definitions are self-explanatory, but it might be helpful to note the following:

**"legislation"** - refers to the laws mentioned in Article 2 and means, for Australia, those parts of the Social Security Act which deal with the pensions covered by the Agreement. If there is a need to refer to the whole of the Social Security Act 1991 (the Act), the expression "social security laws of Australia" is used.

**"period of Australian working life residence"** - is a term taken from the Social Security Act and designates the period of a person's life between the ages of 16 and age pension age, when he/she was an Australian resident. A person does not need to have worked during this period, only to have been a legal resident. Generally, this period is used to calculate the proportion of pension to be paid when the person is outside Australia.

**"period of insurance in Austria"** - is a period during which a person has been making payments (contributions) to the Austrian social security scheme, or a period deemed to have been a contribution period under Austrian social security legislation. Examples of deemed periods are: periods of education after the age of 15, periods of military or war service, periods during which a person is entitled to sickness, maternity or unemployment benefits, etc. See also notes on 11(2) for further details about Austrian periods of insurance.

**Paragraph 2** - provides that in the absence of the definition of a term used in the Agreement, that term, when used in a particular provision, will have the meaning given to it by the legislation of whichever country the particular provision applies to.

## **ARTICLE 2 - LEGISLATIVE SCOPE**

The legislation of Australia and Austria to which the Agreement applies, is that which is named in this Article and is in force at the date of signing of the Agreement.

This Article describes exactly which laws of each country (or in Australia's case, which parts of our law) are affected by the Agreement.

As a general principle, any rules found in this Agreement override the rules in these laws.

**Article 2 Paragraph 1(a)** - sets out the Australian pensions and benefits covered by the Agreement. Any part of the Social Security Act which is relevant to these pensions and benefits is included in the definition of "legislation" to which this Agreement applies.

**Paragraph 1(b)** - describes the Austrian legislation to which the Agreement applies.

**Paragraph 2** - provides that the Agreement still applies to the legislation described in paragraph 1 even if changes to the legislation are made, or the legislation itself is replaced, as happened in Australia in 1991.

**Paragraph 3(a)** - prevents the provisions of other agreements from interfering with the provisions of this Agreement. Australia's agreements are included in the Social Security Act as Schedules, and are technically part of the Act. If it were not for this paragraph, they would fall into the definition of "legislation", which is not desired: it is not intended that special concessions available to people under this Agreement would apply to people who are claiming under other agreements, or vice-versa.

**Paragraph 3(b)** - is the Austrian equivalent of the previous paragraph. It prevents the concessions available to people under this Agreement from applying to people covered by Austria's other agreements. This is especially important when it comes to Austria's portability rules.

## **ARTICLE 3 - PERSONAL SCOPE**

This Article describes the broad group of people to whom the Agreement applies.

These are the people who have been or are Australian residents and people who are or have been covered by Austria's social security scheme. By virtue of the provisions of Article 3, dependants or survivors (ie, spouses, children, etc) of the latter may also be covered by the Agreement.



By itself, Article 3 does not confer any entitlement to benefits. Entitlement must still be judged under the specific terms of the Agreement and the legislation of the country concerned.

#### **ARTICLE 4 - EQUALITY OF TREATMENT**

**Paragraph 1** - ensures that neither country can treat citizens of the other country in a discriminatory way (in comparison to its own citizens) when applying their legislation or the Agreement. The leading words to the sentence, however, make it clear that either country can make exceptions to this principle in any particular part of the Agreement. Since only Austria treats citizens and non-citizens differently, this provision is mostly relevant to Austria, although it is bilaterally stated.

**Paragraph 2** - ensures that benefits under the legislation of one country are granted to people from the other country who live outside the territories of both countries, under the same terms and conditions it applies to its own people residing outside the territories of both countries. For example, it means that Austria must apply the same conditions to granting an Austrian pension to an Australian living in, eg the USA, as it would apply to an Austrian living in the USA.

**Paragraph 3** - is a unilateral Austrian provision listing exceptions to the equality of treatment provisions given in the previous two paragraphs.

**Sub-paragraph 3(a)** - Austria's social security institutions are self-administered bodies which are governed by boards made up of representatives of employees and employers or the insured self-employed. Members of these boards hold office for five years. To hold a board member position, which is honorary, a person needs to be an Austrian national.

Sub-paragraph 3(a) states that, despite the 'equality of treatment' provisions, an Australian citizen or resident will not have the same right as an Austrian citizen as far as participation in the activities of these boards is concerned.

**Sub-paragraph 3(b)** - Austria has concluded Agreements with Germany and Yugoslavia which cover pension payments to people who were citizens of those countries but later became refugees. The Agreements divide up among these countries responsibility for paying pensions for which contributions were made from before WW2 until just after that period. These Agreements became necessary as a result of the adjustments of territories of the various countries at the end of WW2.

Generally, persons who resided in Austria and who were Austrian citizens on given dates are entitled to have certain periods spent outside what is now Austria taken into account in the calculation of their Austrian pensions.

Although Article 2(3)(b) means that the provisions of those conventions can apply to persons claiming Austrian pension under the Agreement, sub-paragraph 3(b) ensures that the equality of treatment provisions will not cause the conventions to apply to persons who were Australian citizens on the specified dates.

Note that it is only important to have been an Austrian citizen on the dates specified in the conventions. A person who later took up Australian citizenship could still be covered by one of those conventions.

**Sub-paragraph 3(c)** - Under the Austrian pension insurance system, an Austrian citizen who works in an Austrian diplomatic mission or consular post is subject to compulsory coverage. This also applies to an Austrian citizen who is hired as the servant of an Austrian diplomat abroad.

Sub-paragraph 3(c) makes clear that Austrian compulsory coverage is not extended, under the equality of treatment provision in Article 4(1), to an Australian citizen who is employed by an Austrian diplomatic mission or consular post in a third state. An Australian citizen who is in this situation will not be covered under the Austrian pension insurance system and will not have to pay contributions.

**Paragraph 4** - Under Austrian legislation, Austrian citizens can have some periods of war service in WW1 or WW2 and equivalent periods (ie, periods as a prisoner of war and periods of forced labour) counted as periods of coverage, for the purposes of determining entitlement to benefits and calculating the rate of benefit payable.

Under the Agreement, the conversion of these periods into periods of coverage is extended to Australian citizens, subject to the person having been an Austrian citizen immediately before 13 March 1938.

## **ARTICLE 5 - EQUIVALENCE OF TERRITORIES**

**Paragraph 1** - Normally, only people who are Australian residents and in Australia can make a claim for an Australian pension. People who left Australia to return to their countries of origin before being granted a pension are, therefore, not usually able to claim Australian pension.

By putting Australian and Austrian territories on the same footing, paragraph, 1 in conjunction with sub-paragraph 4(d) eliminates the need to be a resident of, and present in, Australia to qualify for Australian pension, if the person is residing in Austria or a third country with which Australia has an agreement.

It also provides that those Austrian pensions which, according to Austrian law can only be paid in Austria, will also be paid in Australia, albeit with one exception (see paragraph 5).

**Paragraph 2** - makes it possible for a beneficiary to be paid the pension in his/her country of residence by the other country. It prevents each country from insisting that payments be made into a bank account within its own territory, transferable to the country of residence only at the pensioner's own expense.

**Paragraph 3** - ensures that where the legislation of either country allows for the payment of a pension or benefit abroad, then that benefit or pension, when paid under the Agreement, is also payable outside the territories of both countries. This is needed mostly for Australia, since the Act provides that pensions granted under agreements are not payable overseas unless the Agreement makes special provision for that.

**Paragraph 4** - sets out some exceptions to the equivalence of territories provision found in paragraph 1.

**Sub-paragraph 4(a)** - specifies that paragraph 1, as far as Australia is concerned, is to be applied to everybody to whom the Agreement applies (see Article 3), without making any distinction on the grounds of citizenship. This is because Australia's system is residence-based and not nationality and contribution-based, like Austria's.

**Sub-paragraph 4(b)** - prevents payment of Australian wife or carer pension to claimants who have not had a residential connection with Australia (ie, persons who have never been 'Australian residents' - people with the legal right to remain in Australia).

This limitation is necessary as Australia's legislation does not require any minimum period as an Australian resident for grant of wife or carer pension. It simply requires that a claimant be an Australian resident and in Australia (met by paragraph 1) and be the spouse of an age or invalid pensioner or caring for an Australian pensioner, whichever is applicable. Without this provision, the spouse of a person receiving an Australian age or invalid pension under the Agreement could claim a wife or carer pension under the Agreement, even though the claimant had never been an Australian resident. This would clearly not be in keeping with the spirit of the Australian system.

Sub-paragraph 4(b) also prevents payment of Australian rent allowance in Austria since this allowance is a payment intended only for Australian rental conditions.

**Sub-paragraph 4(c)** - Under normal conditions, certain Australian benefits like sole parent and wife pension are paid abroad for 12 months only, while others, like unemployment and sickness benefits, are not paid abroad at all. This provision ensures that as far as these time limitations are concerned, Austria is treated as though it was Australia ie, an Australian pension would be paid in Austria for as long as it would be paid to a person in Australia. If the person leaves Austria for a third country, time limitations start to apply as if the person was leaving Australia. However, this provision only affects benefits covered by the Agreement.

**Sub-paragraph 4(d)** - expands on the equivalence of territories principle found in Paragraph 1, where it was expressed in general terms.

**Sub-paragraphs 4(d)(i) and (ii)** - allow persons who are residents of Australia, Austria or third countries and who are in Australia, Austria or third countries (a total of 9 possible 'lodgement combinations') to lodge a claim for Australian pension wherever they live. However, lodgement from a third country of an Australian claim under this Agreement is possible only if there is a social security agreement between Australia and that third country providing for mutual cooperation in claim processing.

**Paragraph 5** - introduces the exception that Austria applies to the equivalence of territories principle stated in paragraph 1. Under this paragraph, Austria will not be paying a supplement called 'Ausgleichszulage' into Australia (see the explanation of sub-paragraph 11(4)(c) and paragraph 7(3) for some details on this supplement).

## **PART II**

### **PROVISIONS CONCERNING AUSTRALIAN BENEFITS**

#### **ARTICLE 6 (TOTALISATION)**

Totalisation is a standard provision in social security agreements. It allows people to meet minimum residence or contribution requirements for the grant of a benefit when they do not meet requirements under the usual rules.

Qualification for Australian benefits normally depends on a claimant having certain minimum periods as an Australian resident (eg, 10 years for age pension including at least 5 continuous years). People whose residence in Australia is shorter than that would usually not be able to get a pension. Austria requires minimum contribution periods (eg, 180 monthly contributions during the 30 years preceding the date on which the pension falls due) to get a pension. If a person does not have enough contributions, Austria cannot usually pay a pension.

Totalisation means that people can add together their Austrian periods of contributions and periods during which they were Australian residents to meet the minimum requirements for Austrian and Australian pensions and benefits.

This Article deals only with Australian pensions and benefits.

The amount of pension a person receives is not affected by totalisation. Totalisation simply allows people to be considered for payment.

**Paragraph 1** - describes the process of totalisation and limits its availability to people who meet the minimum qualifying period set out under the Agreement in paragraph 4 of this Article.

**Paragraph 2** - enables a person's (two or more) discontinuous periods of contributions in Austria to be taken into account as one continuous period, but only when the sum of the two or more separate periods is equal to the minimum continuous period required for pension eligibility.

Under Australian legislation, some pensions require a minimum continuous period as an Australian resident (eg, for age pension, 5 continuous years are needed within the overall 10 year minimum). People who are using paragraph 1 to count periods of insurance in Austria as periods as an Australian resident may have difficulties in meeting the continuity requirement as they may have had absences from the workforce resulting in disruptions in their contribution record.

Claimants in that position are helped by paragraph 2 because separate periods of contributions in Austria will be counted as one continuous period.

**Paragraph 3** - prevents overlapping periods of coverage from being counted twice.

People may have continued to contribute to the Austrian social security system while they were Australian residents. This means they were accruing periods of coverage under both schemes at the same time. These are called overlapping periods.

Each country will pay pension in respect of the periods relevant to it, once a person is qualified for a pension.

Under the Agreement, the period will be used once only by Australia when 'totalising' to qualify a person for a benefit. This means that Australia will count the overlapping period as a period as an Australian resident only.

The following example might serve to illustrate the idea:

-AUSTRALIAN RESIDENCE-	
[ 6 YRS	][ 3 YRS ]
<hr/>	
[ 3 YRS ]	[ 8 YRS ]
-	AUSTRIAN CONTRIBUTIONS -

Total Australian residence: 9 years

Total Austrian contributions: 11 years

Amount of overlap: 3 years

For totalisation, Australia counts 9 years of Australian residence plus 8 years of Austrian contributions, to total 17 years, which is more than enough to satisfy the 10 years' residence requirement.

Austria counts 11 years of Austrian contributions plus 6 years of Australian residence totalling 17 years, which more than satisfies their 15 year (180 months) contribution requirement.

**Paragraph 4** - should be read in conjunction with paragraph 1.

**Sub-paragraph 4(a)** - means that claimants for Australian pension who are not Australian residents need to have a minimum period of working-life residence in Australia of 12 months (of which 6 months must be continuous) before they can use the totalisation provisions of the Agreement.

**Sub-paragraph 4(b)** - means that Australian residents do not need to have any minimum period of residence before they can use the totalisation provisions. This means that Austrian people who have just become Australian residents can meet the minimum qualifying period for Australian pensions by using only their periods of insurance in Austria.

**Paragraph 5** - enables claimants for Australian pensions for widows and widowers to use their spouses' periods of insurance in Austria for the purpose of totalisation. The rationale behind this provision is to mainly allow widows, who may not have had the opportunity to make separate contributions towards an Austrian pension because they worked in the home, to qualify for an Australian widow pension through use of their husbands' period of insurance in Austria.

Paragraph 5 also ensures that where a claimant for such an Australian pension and his or her late spouse have overlapping periods of contributions, that period will be counted once only.

#### **ARTICLE 7 (CALCULATION OF AUSTRALIAN BENEFITS)**

**Article 7** - contains the provisions for determining the rate of Australian pensions payable only under the Agreement. There are two rates, one for people in Australia and the other for people outside Australia.

**Paragraph 1** - states that for claimants outside Australia, the rate of pension will be calculated according to the relevant provisions in the Social Security Act 1991. This means that the pension will be paid at a proportional rate on the basis of the claimant's period of working-life residence in Australia, and taking into account Australia's means test. For instance, a claimant with 10 years' working-life residence in Australia, would receive 10/25 of a means-tested pension, while a claimant with 25 years working-life residence or more would receive a full means-tested rate.

Paragraph 1 also states that, when calculating a pensioner's income under the means test provisions to determine the rate of Australian pension payable abroad, only a proportion of the pensioner's Austrian pension is to be taken into account. That ratio, or proportion, is worked out in the same way as the rate of an Australian pension payable abroad ie, 10/25 of an Austrian pension would be taken into account in the income test for a recipient of Australian pension who has had 10 years' working-life residence in Australia. The full amount would be taken into account if the claimant had 25 years' working-life residence in Australia.

Paragraph 1 provisions also apply to Australian pensions being paid abroad which have been granted without the Agreement ie, they have been granted under Australian law and then taken abroad.

**Paragraph 2** - ensures that the concessional treatment of Austrian pension under Australia's income test only applies to those Australian pensions which are paid abroad at a proportional rate.

This provision is needed to prevent the concession from applying when a pensioner is being paid the full rate of Australian pension, even though the pensioner has less than 25 years' working-life residence. This occurs, for instance, for the first 12 months of payment abroad of an Australian pension, when the rate is not proportionalised (proportionalisation cuts in only after 12 months).

Also, many Australian pensioners with less than 25 years' working-life residence do not receive a proportionalised rate abroad because they are protected, for various reasons, by the 1986 legislation which introduced proportional payment of pensions overseas.

Since this special concession is intended to soften the combined effects of proportionality and the income test, it is not appropriate to extend it to pensioners whose pensions are not proportionalised.

**Paragraph 3** - provides that the means-tested Austrian 'top-up' payments (amounts payable in addition to pension basic rate for welfare and income security purposes) are to be disregarded under the Australian income test, when it is applied to calculate the rate of Australian pension payable in Austria.



The income test-exempted Austrian payments are the 'Ausgleichszulage' and any other social assistance payment subject to a means test.

Ausgleichszulage (or compensatory supplement) is an Austrian welfare top-up paid to pensioners who receive a small pension and have little or no other income. The rate of Ausgleichszulage is worked out by subtracting the pensioner's or the pensioner's couple income from the maximum rate of Ausgleichszulage payable.

**Paragraph 4** - sets out the steps to be followed for calculating the rate of an Australian Agreement pension to be paid inside Australia.

There are three steps involved:

- First a claimant's income is calculated without taking into account the Austrian benefit he/she receives (Step 1 - Subparagraph 4(a)).
- Then, the amount of Austrian benefit is deducted from the maximum rate of the Australian pension that has been claimed (Step 2 - Sub-paragraph 4(b)). The resulting figure is the new 'maximum' rate.
- Finally, the relevant rate calculations set out under Australian legislation are applied to this remaining 'maximum' Australian pension, taking into account as income the figure resulting from the first step.

**Paragraph 5** - When the Austrian pension being received by a person claiming an Australian pension under the Agreement in Australia is large, the rate of Australian pension payable, as calculated in paragraph 4, will be very small. It may even be less than the rate that would apply if the same person was living overseas, and with the Australian pension rate calculated according to paragraphs 1, 2 and 3.

When this is the case, the paragraph 5 provision enables the person to be paid the higher ("outside Australia") rate, even though he/she is living in Australia.

**Paragraph 6** - ensures that when Austrian pension is received by one or both of a pensioner couple in Australia, the total amount of the Austrian pension is treated as being apportioned equally between them to produce a uniform rate of Australian pension for both under the Agreement. A similar rule of combining income applies to couples claiming Australian pensions without the help of an agreement.

**Paragraph 7** - sets out the procedures for comparing the rates of Australian pension payable inside and outside the country for the purpose of applying paragraph 5.

Under sub-paragraph 7(a), an initial comparison is made on the first pay day following date of grant of the pension, that is the first pension pay day on which the pensioner is eligible for payment.

Under sub-paragraph 7(b), the comparison is repeated on each anniversary of the above pension pay day for as long as the pensioner maintains entitlement to the pension, taking into account the period of residence in Australia that has been accumulated up to the date when the comparison between the rates is made.

#### **ARTICLE 8**

Entitlement to wife and carer pensions under the Agreement arises from the claimant being the spouse of an age or invalid pensioner whose pension is payable only by virtue of the Agreement. The spouse of a person who qualified under the Agreement for an age or invalid pension could (if he/she were an Australian resident and in Australia) be granted a wife or carer pension without having recourse to the Agreement and without being subject to the Agreement's rate calculation and payment provisions.

In such a case, a spouse is deemed under Article 8 to have been granted a pension under the Agreement. This ensures that both spouses are subject to the same rate calculations and payment rules.

#### **PART III - PROVISIONS CONCERNING AUSTRIAN BENEFITS**

#### **ARTICLE 9**

Article 9 allows a person to add periods of coverage in Austria to periods of working-life residence in Australia in order to meet the minimum contribution requirements for Austrian pension. Periods when contributions in Austria and residence in Australia coincide are counted once only by Austria for this purpose.

#### **ARTICLE 10**

Article 10 sets out the method used by Austria for calculating the rate of Austrian pension payable to claimants under the Agreement. The method involves a number of steps which are described in the body of the Article.

Sub-paragraph 10(1)(a) - states that the first step is to establish whether, by adding periods of contributions in Austria and periods of residence in Australia, in accordance with Article 9, a claimant meets the contribution requirements for an Austrian pension.

An Austrian retirement pension is payable to men at age 65 and to women at age 60. To be granted a retirement pension, a claimant needs to have made at least 180 monthly contributions (15 years) or have at least 180 months of coverage (including deemed contributions) in the 30 years prior to claim.

An early ('anticipated') retirement pension may be paid up to 5 years earlier than a normal retirement pension. In addition to the requirements for a normal retirement pension, special conditions apply:

- (i) the applicant needs to have accumulated 35 years of coverage and needs to have accrued 24 months of contributions in the last 36 months or to have been paying contributions or been in receipt of either Austrian sickness or unemployment benefit during the last 12 months; or

- (ii) to have been in receipt of Austrian unemployment or sickness benefit for a period of 52 weeks out of the last 15 months.

A disability pension may be paid to a person whose impairment has reduced his/her earning capacity by more than 50% and who has at least 5 years of contributions in the last 10 years. More stringent conditions apply to men who become disabled between the ages of 55 and 65, and women who become disabled between the ages of 50 and 60.

A surviving spouse's pension may be paid to the widow or widower of a deceased person in receipt of, or qualified to receive, a retirement or disability pension, so the contributory requirements for this pension are the same as those for retirement or disability pension, whichever applies.

An orphan's pension may be paid for each dependent child under 18 years of age (26 if child is a full-time student). A higher age limit applies if the child is disabled.

Sub-paragraph 10(1)(b) - states that where, through totalisation of periods of coverage in Austria and Australia, a person has an entitlement to an Austrian benefit, the appropriate Austrian institution will calculate a theoretical benefit as if all periods of coverage were completed under the legislation of Austria.

The rate of payment of an Austrian retirement or disability pension is calculated on the basis of a person's average earnings. This average is referred to as the 'basis of assessment'. The earnings are those made in Austria, up-dated to present values.

Once the average salary and the basis of assessment have been calculated, each year of coverage will earn the claimant 1.9% of that basis for the first 30 years of contributions. Further years of contributions, up to a maximum of 15, will attract 1.5% of the basis of assessment per annum.

As an example, a person who had contributed for 40 years would be entitled to  $(30 \times 1.9)\% + (10 \times 1.5)\%$  of the basis of assessment.

Women are granted an additional 3% (Kinderzuschlag) of the basis of assessment for each of their children born in Austria up to a certain maximum % of the basis of assessment.

An increase amounting to 5% of the basis of assessment is paid on top of the pension rate for a dependent child under 18 years of age or for a dependent, full-time student under 26 years of age (if the child is disabled, age limits do not apply). This payment is called 'Kinderzuschuss' and is separate from the 'Kinderzuschlag' supplement described in the preceding paragraph.

The rate of Austrian pension payable to a widow amounts to 60% of the deceased husband's retirement pension, if he was in receipt of one, or 60% of the disability pension to which he would have been entitled at the time of his death.

A widower is usually paid at a rate equivalent to 1/3 of the rate applicable to a widow in the same circumstances. This ratio is scheduled to increase over the next few years for parity purposes.

Austrian orphan's pension is paid at a rate equivalent to 40% of a widow's pension if one parent is dead, and 60% if both of them are dead.

All Austrian pensions, with the exception of orphans' pensions, are subject to a test on earned income. Income (from employment) limits apply with subsequent reductions in the rate of payment. This is essentially a 'retirement test'.

Austrian rates of pension are adjusted yearly in accordance with increases in the average earnings and unemployment rate.

**Sub-paragraph 10(1)(c)** - sets out the final step for the calculation of the rate of Austrian pension payable under this Agreement: the theoretical benefit calculated in accordance with the preceding sub-paragraph is multiplied by the ratio between the period of actual Austrian coverage and the total period of coverage ie, the sum of periods of working-life residence in Australia and periods of contributions in Austria.

**Paragraph 10(2)** - states that where a person has a period of coverage under Austrian legislation which is less than 12 months, Austria will not pay a benefit to that person under this Agreement. However, this provision does not apply if entitlement to that benefit is gained under Austrian legislation only, ie if the normal contribution requirement for that benefit is less than 12 months anyway. This could apply to a benefit for a work accident or occupational disease resulting in death or disability.

#### **ARTICLE 11**

Article 11 embodies a set of rules that Austria will follow in the application of Articles 9 and 10.

**Paragraph 11(1)** - contains the first of these rules and states that only periods of coverage in Austria shall be taken into account for the purpose of determining the Austrian institution responsible for the payment of a benefit.

The Austrian social security system provides coverage in the areas of pensions, health, and workers' accident and illness. Seven institutions are involved in the administration of the system. The majority of them deal exclusively with pension insurance.

If a person has been associated with different institutions because of changes in occupation, the one with which he/she has been associated the longest or the one with which he/she was last associated will be responsible for payment of the benefit. Paragraph 11(1) ensures that this rule applies even in the presence of the Agreement. If it was not so, and total period of coverage were to be taken into consideration, it is possible that the inappropriate Austrian institution might end up being responsible for payment of a benefit under the Agreement.

**Paragraph 11(2)**

Austria divides insurance periods in Austria into 3 types:

(a) contribution period - when contributions were actually made

(b) coverage periods. Includes (b) but can also include 'deemed' periods under Austrian law;

(c) neutral periods - these are periods during which no contributions were actually made, but which do not detract from potential eligibility for benefits. Instead, they cause the 'reference period' (the 180 months before retirement) to be extended back by the given amount so that the requirement to have had a certain number of contributions within the reference period can be more easily met.

Paragraph 11(2) states that periods of employment and self-employment in Australia will be taken into account by Austria as periods of contributions for the purpose of totalisation. Paragraph 11(4) deals with neutral periods and the rest are periods of coverage.

**Paragraph 11(3)** - is there to prevent access, through the Agreement, to the Austrian long-service allowance for miners. This is achieved by disallowing the use of Austria's totalisation and rate calculation provisions (Articles 9 and 10) when claiming the allowance.

The miners' long-service allowance is a benefit consisting of a once only payment added to the miners' supplementary benefit, for which special conditions apply.

Entitlement to the miners' long-service allowance can then be gained only when the requirements set out under Austrian legislation are met.

**Paragraph 11(4)** - is a development of paragraph 10(1), which sets out the steps that Austria will follow in establishing entitlement to, and rate of, Austrian pension under the Agreement.

**Sub-paragraph 11(4)(a)** - states that periods during which a person has an entitlement to an Australian age or invalid pension will be taken into account by Austria as 'neutral periods' (see discussion of paragraph 11(2)).

This means that periods as an Australian invalid pensioner will be taken into account only as far as the reference period for a given Austrian benefit is concerned (ie, the time span during which a set number of contributions need to be made).

Because Australian and Austrian pensionable ages are the same, this standard provision of Austria's will not be relevant to periods spent as an Australian age pensioner.

For instance, the reference period for an Austrian retirement pension is 30 years before pension age, while the contributory requirement is for 180 months of coverage to be completed within that period. If a person had been receiving invalid pension for the last 5 years, that person would effectively have a reference period of 420 months (ie 360 + 60) before age 65, which would make it easier to accumulate the 180 months' coverage in that period needed for retirement purposes.

However, if a person was an Australian resident and receiving invalid pension for part of a reference period, that period would be working-life residence for totalisation purposes and counted as a period of coverage rather than a neutral period.

**Sub-paragraph 11(4)(b)** - states that the average salary (ie, basis of assessment) to be taken into account for determining the rate of Austrian pension payable under the Agreement, will be calculated solely in relation to the claimant's period of insurance in Austria. Conversely, this means that a claimant's salary during his/her residence in Australia will not be taken into consideration for that purpose.

**Sub-paragraph 11(4)(c)** - sets out the Austrian supplementary benefits which are not included in the total amount of Austrian pension before the pro-rata calculation of Article 10(1) is done. They are added on to the pro-rata'd benefit afterwards (see also 11(8)). The benefits involved are: the miners' supplementary benefit, the compensatory supplement and the part of an Austrian pension deriving from supplementary insurance.

The miners' supplementary benefit is paid to miners in addition to the pension. A fixed amount is paid for every 12 months during which a person was engaged in underground mining or equivalent activity.

The compensatory supplement (Ausgleichszulage) is a welfare payment for pensioners whose total income, combined with any other income their spouse may have, is small. The amount of compensatory supplement payable is the balance between the supplement's upper limit and the pensioner's and his/her spouse's actual income.

The term 'supplementary insurance' relates to voluntary contributions paid by a person in addition to compulsory contributions. By paying voluntary contributions, a person increases the rate of pension that he/she will eventually receive.

**Paragraph 11(5)** - is about the way Austria treats overlapping periods of Austrian and Australian coverage. This occurs, for instance, when a person who is residing in Australia pays voluntary contributions towards an Austrian pension.

In cases like this, Austria will consider the overlapping period, when Australian residence and Austrian contributions were being accrued at the same time, as two separate periods ie, as if the two periods did not overlap.

For example, let us suppose that a person has an Austrian contribution record of 13 years and a period of working life residence in Australia of 9 years, while for the first 3 years of residence in Australia that person still made voluntary contributions towards an Austrian pension. Upon retirement, that person will be paid 13/22 of an Austrian pension.

[ \_\_\_\_\_ 13yrs \_\_\_\_\_ ]  
[ 3yrs ]  
[ \_\_\_\_\_ 9yrs \_\_\_\_\_ ]

This is not the usual method of calculation employed in agreements. It is unusual in that the overlapping period is counted twice by Austria for calculating the pro-rata pension rate, thereby increasing the denominator of the fraction and reducing the amount of pension further.

**Paragraph 11(6)** - deals with those cases where the denominator (ie, the sum of periods of coverage in both countries) in the ratio for calculating the Austrian pro-rata pension payable exceeds 540 months (ie, 45 years).

In such cases, Austria will not take into consideration any excess and the denominator will be brought back to 540 months.



**Paragraph 11(7)** - states that the pro-rata method employed by Austria for rate calculation (Article 10(1)(b) and (c)) is also to be applied to the helpless person's allowance.

The pro-rata for this allowance is worked out separately and the resulting amount is added to the rest of the pro-rata pension plus other allowances (see 11(8)).

The helpless person's allowance (Hilflosenzuschuss) is paid to recipients of retirement, disability and survivor's pensions who need constant care and attention. It generally amounts to 50% of the pension, within fixed upper and lower limits.

Please refer to the section dedicated to Articles 12 and 13 to see how the pro-rata calculation is done.

**Paragraph 11(8)** - states that the supplementary payments available under Austrian legislation (ie, miners' supplementary benefit, compensatory supplement, helpless person's allowance and increments from supplementary insurance), will be added to the basic pension rate once the pro-rata calculations have been completed.

**Paragraph 11(9)** - specifies that Austrian miners' benefits can only be accessed under the Agreement by those claimants whose period of residence in Australia includes time spent in mining activities and similar work. Only periods spent in such work can be used for totalisation.

**Paragraph 11(10)** - Austrian pension recipients receive 14 monthly payments over a calendar year, two extra payments being made in May and October. In the Agreement the two extra payments are referred to as 'special payments'.

Paragraph 11(10) states that the 'special payments' are to be calculated in accordance with the pro-rata provision found in Article 10.

Please refer to Articles 12 and 13 to see how these special payments are affected.

## **ARTICLE 12**

**Paragraph 12(1)** - provides that where there is entitlement to an Austrian pension without recourse to the totalisation of periods of coverage (Article 9), Austria will calculate the rate of pension payable in accordance with its internal legislation (ie, disregarding the theoretical benefit and pro-rata provisions found in Article 10), but only for as long as the recipient is not entitled to an Australian benefit of a type equivalent to the Austrian one.

**Paragraph 12(2)** - states that once entitlement to an equivalent Australian benefit has been established, Austria will recalculate the rate of pension payable in accordance with the provisions of Article 10. The result is a reduction (maximum 6%) in Austrian pension rate. The effect of this provision can be backdated to the date when the Australian pension is granted and an 'overpayment' amount can be calculated and raised by Austria.

The final sentence in this paragraph makes it clear that the recalculation provision will come into effect notwithstanding any other applicable provisions under Austria's internal legislation.

Without this provision in the Agreement, Austrian legislation would prohibit such recalculations once a benefit has been put in payment by one of its institutions.

Note that Article 20 prevents this reduction in the Austrian pension from occurring when that Austrian pension was already granted at the time this Agreement comes into force.

## **ARTICLE 13**

The provisions of Article 12 mean that a person's Austrian benefit could actually be reduced when an equivalent Australian benefit is granted.

Under Article 13, if the combined Austrian and Australian pensions are still less than the 'old' rate of Austrian pension, Austria will top the combined pensions up to that 'old' rate.

This re-adjustment provision is also applied to the helpless person's allowance and the 'special payments'.

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

##### **ARTICLE 14 - Lodgement of documents**

Procedures for lodging documents under the internal legislation of both countries will still apply.

**Paragraph 1** - ensures that the original date of lodgement of claims, notices or appeals will be retained regardless of the place of lodgement. Without this provision, the start date of a benefit from one country could be delayed if the claim is lodged in the other country.

**Paragraph 2** - If a claim for Australian age pension is lodged in Australia and the person indicates that he/she made contributions to the Austrian scheme, the claimant is deemed under this provision to have also made a claim for an Austrian age pension. The proper Austrian claim form will have to be completed in due course, so that Austria can assess the claim, but the date of lodgement of the Austrian claim will be the same as that for the original Australian claim.

For the claim for Austrian pension to be paid from that original lodgement date, Australia would have to send the claim for Austrian pension to Austria within three months of the date of lodgement of the original Australian claim.

The provision also works in reverse, ie when a person in Austria claims an Austrian pension, that person is also deemed to have made a claim for the Australian pension of the same type if he/she has resided in Australia and Austria sends the claim to Australia within three months.

The three month time limit does not apply when a person claims an Austrian pension in Australia or an Australian pension in Austria. The claim for Austrian pension is still considered to be also a claim for Australian pension (and vice versa), but of course this Australian claim does not have to be sent to Austria.

**Paragraph 14(3)** - ensures that the institution receiving claims and other documents on behalf of the other country promptly despatches them to its counterpart in that other country.

## **ARTICLE 15 - Advance Payments and Overpayments**

Under the legislation of Austria, benefits can be provisionally put into pay pending the receipt of further details affecting rate of payment.

**Paragraph 1** - covers the situation where these provisional (or advance) payments have been made in respect of a period for which Australia later becomes liable to pay a corresponding (or similar) benefit.

Austria will calculate the amount of pension it has overpaid (see Notes on Article 12(2)) and will then ask Australia to withhold that amount from the lump sum of arrears it is holding for the pensioner, and send the amount to Austria.

The Austrian delegation explained that for the purposes of Paragraph 1, the 'advance' payment that is recovered as overpaid pension is only the amount of the advance that exceeds entitlement - not the entire advance.

**Paragraph 2** - describes how Australia will deal with the recovery of 'overpayments' of its benefits. As in the previous paragraph, this situation occurs when an Austrian benefit becomes payable or has been paid in respect of a period for which a person has been receiving an Australian benefit. Since Australian pensions are income-tested, the Austrian pension received by a person would affect the Australian pension he/she is entitled to.

If the payment of Austrian benefit has actually commenced, Australia will treat the overpayment of its benefit as a debt due by the recipient to the Commonwealth of Australia, and may elect to recover the full amount of the overpayment or part of it through deductions from subsequent payments of its benefit.

**Paragraph 3** - covers the situation where payment of the Austrian benefit has not actually begun.

In this case, following a request from Australia, Austria will pay the amount of Australian overpayment to the competent institution of Australia. The amount will be deducted from Austrian arrears of pension and any balance of these arrears paid to the recipient.

If, however, the amount of overpayment recovered is for any reason insufficient, under 15(2)(e) Australia will be able to recover the outstanding balance through deductions from the ongoing payments of its benefit.

## **ARTICLE 16 - Payments of benefits**

**Paragraph 1** - ensures that each country will be able to pay benefits in its own currency. However, this is discretionary, and payments may also be made in other currencies.

**Paragraph 2** - ensures that no fees or charges will be levied and deducted by either country from the benefits they pay under the Agreement.

## **ARTICLE 17 - Administrative Arrangements and Mutual Assistance**

**Paragraph 1** - simply states that Australia and Austria can draw up whatever administrative rules are necessary to make the Agreement operate effectively.

The body of rules will form part of an Administrative Arrangement, which is a separate document from the Agreement.

The rules may need some fine tuning once the Agreement has started to operate. The task of changing them is made much easier if they are kept in a document separate from the main treaty.

**Paragraph 2** - obliges each country to inform the other of any changes in its legislation that may occur once the Agreement has started to operate.

This only applies to legislation relevant to the Agreement.

**Paragraph 3** - ensures that each country will assist the other in the implementation of the Agreement and the legislation covered by Article 2. This assistance includes the exchange of whatever information is required for the efficient operation of the Agreement or the legislation.

It also states that no charges will be levied for assistance rendered if no cash outlays are involved in its provision.

**Paragraph 4** - relates to the exchange of information on individual claimants and states that each country's confidentiality laws will be adhered to when such exchanges take place. It also makes it clear that information exchanges concerning individuals will be carried out only for the purpose of implementing this Agreement or the legislation covered by it. It would not be possible, for instance, for Australia to ask for information from Austria in order to assist us in determining a claim for Job Search Allowance.

**Paragraph 5** - states that an agency will be established by each country for the purpose of liaising on matters concerning the application of the Agreement. The agencies' main work will be transmitting claims for benefits between the two countries and they will liaise on matters ranging from information exchanges on individual claims to the provision of any assistance the other agency may require to ensure an efficient implementation of the Agreement.

As with Australia's other Agreements, the liaison agency for Australia is the Department of Social Security's International Operations Branch in Hobart.

**Paragraph 6** - ensures that claims and other documents will be accepted by both parties in either the English or German languages.

**Paragraph 7** - provides for medical examinations of claimants and beneficiaries of one party living in the other's territory, to be arranged or carried out by the latter party upon a request from the former. The party arranging the medical examination will not be able to seek reimbursement for any expenses it incurred.

#### **ARTICLE 18 - Exemption from taxes and from authentication**

**Paragraph 1** - refers to concessions on charges for obtaining documents which must accompany claims for benefits (eg, birth certificates). It ensures that these concessions also apply to documents obtained in one country for claims for benefits from the other country.

In Australia, most such charges, insofar as they exist, are not under Federal Government control and this provision will have no effect.

**Paragraph 2** - states that neither party will require the authentication of claim documentation by local authorities.

#### **ARTICLE 19 - Resolution of difficulties**

This Article states a basic mechanism for the resolution of differences the parties may have in connection with any aspect or application of the Agreement.

**Paragraph 1** - states that where there is disagreement over how a provision or provisions of this Agreement are applied, the parties will try to resolve their differences, as far as feasible, by the usual means (discussion, negotiation).

**Paragraph 2** - states that if no solution to the dispute is found within six months, an independent arbitrator acceptable to both parties will be selected to settle the issue; his/her decisions will be binding.

Besides agreeing on an arbitrator, the parties will also have to agree on the procedures to be adopted by the arbitrator for settling the dispute.

## **PART V - TRANSITIONAL AND FINAL PROVISIONS**

### **ARTICLE 20 - Transitional Provisions**

**Paragraph 1** - simply states that no benefit will be paid under the Agreement in respect of a payment period that occurred before its entry into force.

**Paragraph 2** - means that when assessing eligibility for benefits, periods in either country accrued before the entry into force of the Agreement shall be taken into account.

**Paragraph 3** - extends the previous provision to cover events which may give rise to benefit entitlement (ie, death, disability and widowhood), providing that no lump-sum payment has been made to settle the entitlement. In other words, entitlement to a benefit through one of the events above will not be affected by the event having occurred before the date of start of the Agreement.

This paragraph also enables claimants to have their claims for benefits under the Agreement backdated (and accordingly paid) to its start date, providing the claims are lodged within a year from the date the Agreement starts. This concession is only available in the first year of operation of the Agreement.

The purpose of this is to ensure that no one is disadvantaged by not hearing about the Agreement at the time of its implementation.

**Paragraph 4** - states that within the boundaries of the parties' respective internal legislation, this Agreement will not cause benefits, entitlement to which was established before the Agreement's start date, to be reduced.

This is mainly relevant to Austria's Article 12. Austria will not reduce to the pro-rata rate, as described in Article 12, any benefit already paid under its legislation at the time of implementation of the Agreement.

However, this Article will not prevent any rate reductions being effected under each country's domestic law.

## **ARTICLE 21 - Protection of Existing Rights**

Special rights have been granted under Austrian legislation to people who before and during WW2 were persecuted because of their political or religious persuasion or ethnic background.

This Article ensures that these special rights will not be eroded or adversely affected by the Agreement.

## **ARTICLE 22 - Entry into Force and Termination**

**Paragraph 1** - states that the Agreement will become operational on the first day of the third month following an exchange of notes, by the two countries, through the diplomatic channel. The notes will say that all matters necessary for the start of the Agreement have been settled. This means that all forms and computer systems will be ready and staff will have been trained, where necessary, in implementing the Agreement.

**Paragraph 2** - defines how either Party can terminate the Agreement if it wants to. This would usually only happen if there were major problems with the Agreement that could not be resolved by negotiation or arbitration.

**Paragraph 3** - ensures that people who are in receipt of an Agreement benefit (or who have applied for one before the end of the 12 months that precede its termination), will continue to be paid or will start to get paid even though the Agreement may have been cancelled. Claims lodged after that 12 months would not be recognised.