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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

SOCIAL SECURITY (NEW ZEALAND AGREEMENT)  
AMENDMENT BILL 1994

EXPLANATORY MEMORANDUM

(Circulated by authority of the Hon Janice Crosio MP  
Parliamentary Secretary to the Minister for Social Security  
representing the Minister for Social Security)

**SOCIAL SECURITY (NEW ZEALAND AGREEMENT)  
AMENDMENT BILL 1994**

**OUTLINE AND FINANCIAL IMPACT STATEMENT**

The *Social Security Act 1991* (the Act) provides for agreements between Australia and foreign countries on social security matters. Such agreements are incorporated into the Act as schedules to bring the Agreements into force so that they may modify the Act as appropriate.

A new international agreement on social security was signed by Australia and New Zealand on 19 July 1994.

The purpose of the Bill is to provide for the omission of the existing agreement from the Act and insert the new Agreement.

The estimated savings resulting from the new Agreement are estimated to be \$2.0m in 1994-95, \$16.7m in 1995-96 and \$34.2m in 1996-97.

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**Clause 1** of the Bill sets out how the amending Act is to be cited and states that the *Social Security Act 1991* is to be referred to in the amending Act as the "Principal Act".

**Clause 2** states that the amending Act is to commence on the day it receives the Royal Assent apart from section 4 of the amending Act. Section 4 provides for the omission from the Principal Act of the existing agreement with New Zealand and its substitution with the new Agreement. Section 4 will commence on the day on which the new Agreement comes into force under Article 22 of that Agreement.

**Clause 3** provides for the amendment of subsection 1304(1) of the Principal Act. That subsection gives the Secretary to the Department of Social Security a power to obtain information or documents that is relevant to specified matters (for example, information that is relevant to whether a social security claimant is qualified for a social security payment). Clause 3 amends that subsection so as to allow the Secretary to require a person to give information or produce documents relevant to the question of the administration of an international social security agreement.

With respect to the social security Agreement between Australia and New Zealand Agreement, this will enable information to be obtained prior to the commencement of the new agreement that is relevant to calculation of the amount of reimbursement between Australia and New Zealand.

**Clause 4** amends the Principal Act by omitting the existing international social security agreement with New Zealand that is set out in Schedule 4 of the Principal Act and inserting a new agreement.

## **SCHEDULE**

The **Schedule** to the amending Act contains the text of the new Agreement on Social Security between Australia and New Zealand that will be inserted as Schedule 4 in the Principal Act by **clause 4**.

The Agreement on Social Security between Australia and New Zealand will be inserted into the Principal Act on the day on which the new Agreement comes into force under Article 22 of that Agreement (**subclause 2(2)**).

The Explanatory Notes for the new Agreement follow.

**EXPLANATORY NOTES ON THE**  
**AGREEMENT**  
**ON SOCIAL SECURITY**  
**between**  
**AUSTRALIA**  
**and**  
**NEW ZEALAND**

## INTRODUCTION

The Agreement on Social Security between Australia and New Zealand was signed on 19 July 1994. It co-ordinates the countries' social security systems to provide social security coverage to those who move between the two countries.

In 1943, Australia and New Zealand signed a Social Security Agreement under which each country agreed to pay pensions to residents who had come from the other country. Reimbursement arrangements have been gradually introduced to ensure that the arrangement can withstand imbalances in migration patterns between the two countries. During the latter part of the 1980s, there was a significant net intake of New Zealanders into Australia. This agreement attempts to redress the imbalance by having each country reimburse the other for the cost of pensions paid to their former residents.

A key element of agreements is the undertaking by the partners to share the responsibility for providing adequate social security coverage and, as a consequence, the associated costs. Under the new Agreement, New Zealand will reimburse Australia for pensions paid to people from New Zealand with less than 10 years residence in Australia during their working life. Australia will similarly reimburse New Zealand for the pensions it pays to people from Australia. The level of reimbursement in these cases will be based broadly on the percentage of a person's working life spent in each country.

Australia's agreement with New Zealand is a *host-country* style agreement. Under this style of agreement, the adopted country of residence meets the individual's entire social security coverage. It differs from Australia's other agreements, which are *shared-responsibility* agreements. These other agreements result in shared financial responsibility between the countries for the costs of social security coverage of people with substantial periods of residence in Australia and the other country.

## PART 1

### 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 use or because Australia and New Zealand may use the terms differently in their respective social security legislation.

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

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

**"benefit"** - includes the additional amounts of pension that are payable for dependent children.

**"first financial year"** - The reimbursement provisions of this agreement come into force on 1 January 1995, regardless of when the rest of the agreement is ready for implementation. The reimbursement provisions refer to the half year from that date to 30 June 1995 as the "first financial year".

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

**"period of Australian working life residence"** - refers to the period of residence in Australia between age 16 and age pension age, which is defined in the *Social Security Act*.

**"period of New Zealand working life residence"** - which refers to the concept of "ordinary residence" that is used throughout New Zealand law, means legal residence. In practice, a settlement test is applied. New Zealand's Act does not have any definition for working life residence, so it has to be defined more explicitly here than for Australia. It includes periods spent on agreement pensions, not being New Zealand Superannuation.

**"partner"** - The New Zealand Act refers to the term "spouse". It includes de facto partners.

**"territory"** - The Cook Islands, Niue and Tokelau have visa-free entry to New Zealand and Cook Islanders are actually New Zealand citizens. However, residence in those places does not count as residence in New Zealand for the purposes of this Agreement.

**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**

**Article 2, Paragraph 1** - The legislation of Australia and New Zealand to which the Agreement applies is named in this Article. It is the legislation in force when the Agreement is signed. The Agreement also applies to any amendments that are made to the legislation after the agreement is signed.

This Article describes exactly which laws of each country and which parts of those laws are modified by the Agreement.

As a general principle, any rules found in this Agreement override the particular parts of those laws.

**Sub-paragraph 1 (a)** - sets out the Australian pensions and allowances covered by the Agreement. Any part of the *Social Security Act* that is relevant to these pensions and allowances is included in the definition of legislation to which this Agreement applies. These benefits are those for which there will be reimbursement from New Zealand to Australia and for which New Zealanders can apply in Australia, using residence in New Zealand to qualify.

**Sub-paragraph (b)** - describes the New Zealand legislation to which the Agreement applies. These are the benefits for which there will be reimbursement from Australia to New Zealand and for which former Australian residents can apply in New Zealand, using residence in Australia to qualify.

**Paragraph 2** - specifies that if either country passes laws to introduce new categories of beneficiaries, the Agreement will not automatically cover those new categories. However, the countries have an option to agree to include them in a formal amendment to the Agreement (a Protocol).

## **ARTICLE 3 - Personal Scope**

**Paragraph 1** - describes the broad group of people to whom the Agreement applies. These are the people who are or who have been Australian residents and people who are or have been New Zealand residents. Dependants (eg partners) of these people may also be covered by the Agreement. By itself, Article 3 does not confer any entitlement to benefits. Entitlement is still worked out under the specific terms of the Agreement and legislation of the country that pays the benefit.

**Paragraph 2** - specifies that the Agreement applies only to people who have the legal right to reside in the country concerned.

**Paragraph 3** - specifies that any period(s) of illegal residence cannot be used for any purpose provided in the Agreement, including qualifying for benefits or calculating reimbursement liabilities.



## **ARTICLE 4 - Equality of Treatment**

Makes sure that people covered by the Agreement are not treated in a discriminatory manner by either Australia or New Zealand.

An example of the kind of discrimination that could occur without the Agreement is where a country insists on citizenship as a prerequisite for pension entitlement. Neither Australia nor New Zealand imposes that kind of restriction, but, if either did, the provisions of Article 4 would be expected to override it.

## **PART II**

### **PROVISIONS RELATING TO BENEFITS**

#### **ARTICLE 5 - Corresponding Benefits**

**Article 5, Paragraph 1** - This provision relates to Articles 7 and 8 (qualification for benefits) and Article 11 (criteria for reimbursement). It was required so that neither country would have to reimburse the other for pensions paid to persons who would not be qualified for a similar pension in the reimbursing country.

An example of where this would apply is where a woman from New Zealand comes to Australia at age 62 and claims age pension. She would not be qualified for New Zealand Superannuation if she was in New Zealand because she is too young. Under (a), in conjunction with Article 7, she would not be qualified for an Australian age pension, and even if she was, it would not be reimbursable (Article 11).

However, because of (b), if the same woman would be qualified for a New Zealand widow pension if she was in New Zealand, she can be granted an Australian age pension and Australia can be reimbursed for her.

#### **ARTICLE 6 - Partner Related Benefits**

**Article 6, Paragraph 1** - In Australia, the partner of an age or disability support pensioner being paid under the agreement can claim an Australian wife or carer pension under the Act, without having to depend upon the provisions of the Agreement. This is because there are no requirements for prior periods of residence to qualify for those pensions. Under this agreement, such a wife or carer pension will be treated as being paid under the agreement. This will affect the portability rights for that pension and if a foreign pension is being received by the couple, it will affect the rate of pension also. It does not affect reimbursement.

**Paragraphs 2 and 3** - These paragraphs are included for clarity, as paragraph 1 applies to wife and carer pensions only.

## **ARTICLE 7 - Eligibility for New Zealand Benefits by Former Residents of Australia**

**Article 7, Paragraph 1** - This paragraph sets out the conditions under which a person coming from Australia can qualify for New Zealand Superannuation (NZS).

**Sub-paragraph (a)** - Ensures that a person who is too young for Australian age pension (eg a male aged 64 years) cannot go to New Zealand and claim NZS under the agreement.

**Sub-paragraph (b)** - Ensures that New Zealand will take responsibility for anyone from Australia who has gone there permanently or who will be there at least a year, or who has been there at least a year at the time of claim.

**Sub-paragraph (c)** - These provisions only apply to people who arrive directly from Australia, or who, arriving from a third country, use the Trans-Tasman Travel Arrangement (TTTA) to gain entry to New Zealand, which they can do if they have an Australian passport. In New Zealand, the TTTA can also be used by Australian residents, not just Australian passport holders/citizens.

**Sub-paragraph (d)** - Means that these qualification provisions can only be used by people who have 10 years as an Australian resident after age 16.

**Paragraph 2** - This paragraph sets out the conditions under which a person coming from Australia can qualify for a New Zealand payment other than NZS, such as invalidity, widow or domestic purposes benefits.

**Sub-paragraph (a)** - Ensures that a person who is too young for New Zealand domestic purposes benefit (DPB) (eg being under 18), but who would qualify for sole parent pension in Australia cannot go to New Zealand and claim DPB under the agreement. This would not be possible anyway, but the provision appears in both the Australian and New Zealand Articles for balance and the provision *is* needed in the reverse situation.

**Sub-paragraph (b)** - Ensures that New Zealand will take responsibility for anyone from Australia who has gone there permanently or who will be there at least a year or who has been there at least a year at the time of claim.

**Sub-paragraph (c)** - Means these provisions only apply to people who arrive directly from Australia, or who, arriving from a third country, use the Trans-Tasman Travel Arrangement (TTTA) to gain entry to New Zealand, which they can do if they have an Australian passport. In New Zealand, the TTTA can also be used by Australian residents, not just Australian passport holders/citizens.

**Sub-paragraph (d)** - Means that these provisions can only be used by people who have 10 years as an Australian resident. Note that this is 10 years at any time, not 10 years after age 16, as it is for NZS.

**Paragraph 3** - This provision is carried over from the old agreement. It maintains the 6 month wait for DPB for new arrivals in New Zealand from Australia. The provisions of the old agreement have been simplified in this version.

**Paragraph 4** - The temporary absence provisions of New Zealand legislation allow NZS pensioners to be absent for 6 months, and other pensioners 4 weeks, without losing qualification for pension. This paragraph means that those periods will neither be extended nor truncated under this Agreement.

**Paragraph 5** - This provision states that a person receiving an Australian pension is not eligible for a New Zealand payment concurrently. Note that this only refers to benefits as defined in Articles 1 and 2. Each country pays pensions to the people who live in its territory.

**Paragraph 6** - In some instances, Australia or New Zealand will have to approach the recipient of pension for information to establish whether payments to the person in question are reimbursable. Failure to supply any information that is needed and which the person has can result in cancellation of payments or the pension not being granted at all.

## **ARTICLE 8 - Eligibility for Australian Benefits by Former Residents of New Zealand**

**Article 8, Paragraph 1** - This paragraph sets out the conditions under which a person coming from New Zealand can qualify for Australian age pension.

**Sub-paragraph (a)** - Ensures that a person who is too young for NZS (eg a female aged 61 years) cannot come to Australia and claim pension under the agreement. Note that it does not stop someone qualifying in their own right, if they have enough residence to do so.

**Sub-paragraph (b)** - Ensures that Australia will take responsibility for anyone from New Zealand who has come here permanently or who will be here at least a year or who has been here at least a year at the time of claim.

**Sub-paragraph (c)** - Means that these provisions only apply to people who arrive directly from New Zealand, or who, arriving from a third country, use the Trans-Tasman Travel Arrangement (TTTA) to gain entry to Australia, which they can do if they have a New Zealand passport. The TTTA can only be used by New Zealand *citizens* to gain entry to Australia.

**Sub-paragraph (d)** - Means that these provisions can only be used by people who have 10 years of "ordinary residence" in New Zealand after age 16. We require residence in New Zealand after age 16 because that is what New Zealand requires for qualification for NZS.

**Paragraph 2** - This paragraph sets out the conditions under which a person coming from New Zealand can qualify for an Australian pension, *other than* age pension, such as disability support pension (DSP), widow B pension or sole parent pension.

**Sub-paragraph (a)** - Ensures that a person who is too young for New Zealand domestic purposes benefit (DPB) (eg being under 18), but who would qualify for sole parent pension in Australia cannot come to Australia and claim sole parent pension (SPP) under the agreement.

**Sub-paragraph (b)** - Ensures that Australia will take responsibility for anyone from New Zealand who has come here permanently or who will be here at least a year or who has been here at least a year at the time of claim.

**Sub-paragraph (c)** - Means these provisions only apply to people who arrive directly from New Zealand, or who, arriving from a third country, use the Trans-Tasman Travel Arrangement (TTTA) to gain entry to Australia, which they can do if they have a New Zealand passport. Only New Zealand *citizens* can use the TTTA for entry into Australia.

**Sub-paragraph (d)** - Means that these provisions can only be used by people who have 10 years "ordinary residence" in New Zealand. Note that this is 10 years at any time, not 10 years after age 16, as it is for age pension.

Note that the 10 year requirement still applies if the qualification period for the Australian pension is 5 years, as is the case for widow B pension.

**Paragraph 3** - This provision is carried over from the old agreement. It maintains the 6 month wait for sole parent pension for new arrivals in Australia from New Zealand. The provisions of the old agreement have been simplified in this version.

**Paragraph 4** - This means that Australian pensions will not be portable to New Zealand if the person has settled in New Zealand. A person who goes permanently from Australia to New Zealand (and this is known at the time) will therefore lose qualification for Australian pension as soon as they arrive in New Zealand. Article 7 ensures that New Zealand can grant them a pension instead. Note that if the person does not qualify for a New Zealand pension for some reason, Australia will continue to pay their pension.

**Paragraph 5** - This applies to a person who goes to New Zealand for a temporary period. The Australian pension will stop after 6 months in the case of age pension and after 4 weeks in most other cases. Australia will not pay its pensions in New Zealand for any period longer than that for which New Zealand would pay a similar pension in Australia.

**Paragraph 6** - This paragraph is to prevent New Zealand using its deprivation provisions when assessing a person's eligibility for a New Zealand benefit. Usually, if a person surrenders a foreign pension in order to receive a New Zealand benefit, the Department of Social Welfare (DSW) will assess the pension of that person as if they were still receiving that foreign pension. This will assist people who are transferring from Australian to New Zealand pension. This provision is not necessary for the situation where Australian pension is granted, since Australia would only be granting pension in circumstances where the New Zealand pension has already been forfeited.

**Paragraph 7** - This ensures that Australia will not grant pension to someone who is still entitled to a New Zealand benefit. This would not normally be possible anyway.

**Paragraph 8** - In some instances, Australia or New Zealand will have to approach the recipient of pension for information to establish whether the person in question is reimbursable. Failure to supply any information that is needed and which the person has can result in cancellation of payments or the pension not being granted at all.

## **ARTICLE 9 - Calculation of Rates of Benefits**

When read with Australia's legislation, this Article determines the rates of Australian and New Zealand pensions to be paid under the Agreement. It also indicates how a pension is calculated taking into account the receipt of foreign pension.

**Article 9, Paragraph 1** - This means that, with certain exceptions, each country applies its own income test.

**Paragraph 2** - This paragraph indicates the method for calculating pension under the agreement when a person is also in receipt of a foreign pension from a third country. When a person relies on Article 7 or 8 for qualification, any pension that person receives from the government of a third country (eg a UK pension) is treated as a direct deduction. For Australian pension, when the person has accumulated enough residence to qualify for pension without the help of this agreement, the direct deductions will no longer apply and the UK pension will become ordinary income. Under New Zealand law, the direct deduction of foreign pension continues in perpetuity.

**Paragraph 3** - Sub-paragraph (a) is Australia's usual method of handling direct deductions of foreign pensions for couples. If both are paid under the agreement, they both get the same rate.

Sub-paragraph (b) is New Zealand's usual method. The foreign pension is deducted from the pension of the person who actually receives it. If there is excess foreign pension from that process, the rest comes off the partner's pension. This handles the situation of a couple where one receives Australian pension and the other, New Zealand pension.

**Paragraph 4** - This situation could arise if, for example, an Australian pensioner went to New Zealand and married a New Zealand pensioner. In the first 6 months they may not have decided where to live and the Australian pension would continue, just as the partner's New Zealand pension would. In this situation, which will resolve itself within 6 months, this provision will stop Australia from having to take the NZS into account as income, which would not be reasonable and also generate rate instability because of the interaction between the two rates in the income test.

## **ARTICLE 10 - Residence in Third States**

**Article 10, Paragraph 1** - When a person takes a portable pension to a third country, they could go to a country with which New Zealand has an agreement and where grant of a New Zealand pension becomes possible. In those cases, Australia and New Zealand ignore each others' pensions when calculating rates, to avoid rate instability. A few pensioners may be slightly better off than if they were in either Australia or New Zealand, but this will be fairly rare.

## PART III

### REIMBURSEMENT PROVISIONS

#### ARTICLE 11 - Criteria for Reimbursement of Benefits

**Article 11, Paragraph 1** - This section outlines the criteria for deciding whether New Zealand must reimburse Australia for any given age pension paid by Australia.

**Sub-paragraph (a)** - Means that if an age pension is reimbursable, it will always be reimbursable, since working life residence cannot be accrued after the pensioner attains age pension age. This category will include people who start off as agreement pensioners but who eventually qualify for pension in their own right. "Australian working life residence" is a defined term in the *Social Security Act*.

**Sub-paragraph (b)** - Means that reimbursement will occur only for people who move directly from New Zealand to Australia (these could be citizens of any country who are migrating) *or* who enter Australia (from any country) on a New Zealand passport.

**Sub-paragraph (c)** - Means that New Zealand will not reimburse Australia for people who have spent less than 10 years in New Zealand. The 10 years residence can be at any time during a person's life, not just during working life. Most of these people will *not* be able to qualify for an Australian benefit under the agreement anyway, although there may be some cases who can qualify under the UK agreement.

**Sub-paragraph (d)** - Means that New Zealand will only reimburse Australia when a person would have qualified for a similar benefit in New Zealand, had they remained there. Article 5 indicates what constitutes a similar benefit.

**Sub-paragraph (e)** - Reimbursement applies to Australian residents or to pensioners who are qualified for pension because of Article 8 and will either be here for 12 months or have already been here for 12 months. There will be no reimbursement for pensioners who live in third countries.

**Sub-paragraph (f)** - This limitation captures the last wave of New Zealand migration to Australia, including pensioner migration. The previous agreement only secured reimbursement for some of the people who arrived after April 1989; this provision extends that backwards by six and a half years. Also, (unlike the present situation) reimbursement is not limited to those who actually claimed a pension before they left New Zealand.

Note that, according to (f), it is possible to get reimbursement for someone who was granted pension prior to 1983, who then went overseas on portability and who "last returned" to Australia on or after 1 January 1983.

Note that the date in the introductory lines of the Agreement means that even if this agreement is not ready for implementation on 1 January 1995, New Zealand's reimbursements will become due from then.

**Paragraph 2** - This section outlines the criteria for deciding whether Australia must reimburse New Zealand for New Zealand Superannuation (NZS) paid to any given pensioner. These provisions are a mirror-image of the previous paragraph's.

**Sub-paragraph (a)** - Means that if an NZ Superannuitant is reimbursable, he or she will always be reimbursable, since working life residence cannot be accrued after attaining NZS age. This category will include people who start off as agreement pensioners but who eventually qualify for pension in their own right.

**Sub-paragraph (b)** - Means that reimbursement will occur only for people who move directly from Australia to New Zealand (these could be citizens of any country who are migrating) *or* who enter New Zealand (from any country) on an Australian passport.

**Sub-paragraph (c)** - This has been included for balance, to reflect the corresponding provision for New Zealand's reimbursements.

**Sub-paragraph (d)** - Means that Australia will only reimburse New Zealand when a person would have qualified for a similar benefit in Australia, had they remained here. Article 5 indicates what constitutes a similar benefit.

**Sub-paragraph (e)** - Reimbursement applies to people who are ordinarily resident in New Zealand or pensioners who are qualified for pension because of Article 7 and will either be there for 12 months, or have already been there for 12 months.

**Sub-paragraph (f)** - This has been included for balance to reflect the corresponding provision for New Zealand's reimbursements.

**Paragraph 3** - Means that where sole parent pension (SPP) is being paid to a person who is not a legal widow or widower, reimbursement will not start until the person has been in receipt of payment for 12 consecutive months. Note that reimbursement will start from the beginning of payments (or the start of the agreement) for all sole parents who are legal widows or widowers.

**Paragraph 4** - A person who is receiving disability support pension (DSP), widow B pension, wife pension or sole parent pension (SPP) will still be able to accrue working life residence while they receive that pension. This means that reimbursement will eventually stop for many people on any of those pensions, since they will no longer be a person who has less than 10 years working life residence.

**Paragraph 5** - This applies to people who are living abroad in third countries. New Zealand's allowable portability periods are shorter than Australia's, so this paragraph ensures that reimbursement only occurs for periods which would be payable under New Zealand's domestic legislation, had the person left from New Zealand, rather than from Australia.

**Paragraph 6** - Regardless of whether it fits into any of the criteria for reimbursement in paragraph 1, an Australian pension paid under the old agreement will be reimbursable under this agreement. The rate of reimbursement will be worked out under the provisions of this agreement, not under the previous agreement.

## ARTICLE 12 - Rate of Reimbursement of Benefits

**Article 12, Paragraph 1** - The mutual reimbursement will be at a proportional rate, based on the number of months a person lived in the reimbursing country, over a fixed denominator. Sub-paragraph (a) works out that fraction.

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$$\frac{\text{working life residence in reimbursing country}}{300 \text{ (or 480 for age pension)}} \times \text{nominal benefit}$$

The *nominal benefit* is defined in the next paragraph of the Agreement.

In practice, because of the criteria for reimbursement, most people who are reimbursable will attract 100% reimbursement of the nominal benefit, because the top side of the fraction for the proportion will usually be as big as the bottom side.

For example, if a woman comes to Australia at age 65 and claims an age pension, and has lived the rest of her life in New Zealand, New Zealand has to reimburse Australia 480/480ths or 100% of the nominal benefit.

Or, if a man arrives in Australia at age 38 and claims disability support pension (DSP) on arrival, and has lived in New Zealand for the rest of his life, New Zealand has to reimburse Australia for 264/300ths  $[(22 \times 12) / (25 \times 12)]$ ths of the nominal benefit.

**Paragraph 2** - This is where the nominal benefit is defined, to which the fraction worked out in paragraph 1 is applied, for calculating reimbursements. It should be noted that the income test for NZS is applied by the New Zealand taxation authority, not by the Department of Social Welfare (DSW), so when working out how much New Zealand would have paid the same person, we have to refer to the special surcharge for pensioners in the New Zealand taxation legislation.

**Sub-paragraph (a)** - This provision ensures that New Zealand reimburses Australia the amount actually paid to the person, or the amount that would be paid to that person if they were in New Zealand, whichever is the lesser. It describes or replicates the income test effects of the taxation legislation referred to above. The amount actually paid by DSW is a gross rate and the pensioner pays a special tax surcharge to reduce the net pension according to the amount of his or her income. Parts A to D define the reference maximum rates for people in various domestic situations. New Zealand pays different rates to single people, depending on whether they live alone or share accommodation and to couples, depending on whether one or both partners qualify for a benefit.

**Sub-paragraph (b)** - Specifies that when Australia is paying a widow B pension, sole parent pension (SPP) or disability support pension (DSP) to a person covered by the reimbursement provisions, the rate of the "nominal benefit" (to which the pro-rata for reimbursement by New Zealand will apply) will be capped by the amount that New Zealand would have paid the same person, if the person was in New Zealand. If the amount of Australian pension actually paid is less than the person would get in New Zealand, New Zealand reimburses us that actual amount paid.



In New Zealand, widow's benefit, domestic purposes benefit and invalid's benefit are all income tested. The income test is performed by the Department of Social Welfare (DSW), not the taxation authorities, as it is for NZS.

**Sub-paragraph (c)** - This subparagraph defines what the "nominal benefit" (see paragraph 1) will be when Australia is reimbursing New Zealand for NZS. The nominal benefit will be the lesser of either the net amount that the pensioner actually received in New Zealand, or the amount that the person would have received if he or she was in Australia.

**Sub-paragraph (d)** - This subparagraph defines what the "nominal benefit" (see paragraph 1) will be when Australia is reimbursing New Zealand for widow's benefit, domestic purposes benefit and invalid's benefit. The nominal benefit will be the lesser of either the net amount that the pensioner actually received in New Zealand, or the amount that the person would have received if he or she was in Australia.

**Paragraph 3** - This provision means that several items are not included in the definition of income when working out the "nominal benefit" for paragraph 2. This is necessary because these paragraphs attempt to reproduce New Zealand's superannuation surcharge and pension income tests. In the New Zealand legislation, where the original provisions reside, the definitions of income used in those Acts prevail. Income is not defined in this Agreement, and as a precaution, this provision makes it absolutely clear that the nominal benefit calculation is not to be reduced by payments which are not treated as ordinary income under the New Zealand Acts.

**Paragraph 4** - Periods of working life residence are to be rounded up, in months.

**Paragraph 5** - The "additional amount or supplement" here means payments like basic family payment (BFP) which are not covered by the definition of "benefit" in Article 1. It does not refer to a pensioner's additional family payment (AFP), for which there will be reimbursement.

**Paragraph 6** - It will sometimes be necessary to use Australian working life residence when determining whether a benefit is reimbursable and calculating the reimbursement amount. In the Australian legislation, the working life residence of a member of a couple is taken to be the same as that of his or her partner, if that is higher. This provision specifies that the individual's working life residence (rather than the partner's) is to be used. The Agreement overrides the Act on this point.

## **ARTICLE 13 - Phase-in Provisions**

**Paragraph 1** - This provision allows for the phasing-in of the reimbursements for all pensions that are already in pay as at 1 January 1994. The phasing-in is to occur over 5 years, with 100% reimbursement being effective by the 5th year.

**Paragraph 2** - As the phasing-in provisions allowed for in paragraph 1 could result in the first financial year producing a smaller total reimbursement from New Zealand than we receive now, this provision has been inserted to ensure that the current reimbursement level is maintained.

**Paragraph 3** - Specifies that the phasing-in of reimbursements does *not* apply to all pensions granted on or after 1 January 1995.

## **ARTICLE 14 - Reimbursement Procedures**

**Paragraph 1** - Specifies that each year, each country gives the other an estimate for how much money that other country will have to reimburse. The estimate for the coming financial year must be given at least by the end of the previous April. The reimbursements under this agreement start on 1 January 1995 and for the first financial year of operation, the estimates must be exchanged by the end of October 1994.

**Paragraph 2** - Specifies that each country has to pay the amount of the estimate provided by the other country.

**Paragraph 3** - Specifies that after each country receives the estimate of its reimbursements for the coming year, it divides the amount into four equal instalments. The first instalment falls due at the very beginning of the financial year, so the instalments are paid in advance.

**Paragraph 4** - Specifies that the quarterly instalments allowed for in the previous paragraph do not apply in the period 1 January 1995 to 30 June 1995. For that period, there will be only one payment, falling due halfway through it.

**Paragraph 5** - Specifies that by 30 September 1995 (or 30 September any year), Australia and New Zealand have to exchange reconciliation statements, showing how much each country should have reimbursed, compared to how much each was asked to reimburse, according to the estimates exchanged before the beginning of the financial year.

**Paragraph 6** - Either or both of the Parties may have asked the other for (and received) reimbursements in excess of, or less than the actual amount paid out to pensioners. This could occur when there has been a sudden increase in pensioner migration, for example. This paragraph allows that the discrepancy can be made up in the next regular reimbursement.

**Paragraph 7** - This specifies that where a country has *underestimated* its actual payments for a given financial year and has asked the other country to pay the difference between the estimate and the actual outlays, the other country also has to pay interest on the amount of the underpayment. A whole year's interest will be payable on the first quarter's discrepancy, 9 months' interest will be payable on the second quarter's discrepancy etc. Where a country has *overestimated* the amount of its outlays, it will have to pay interest on the excess of reimbursement it has received from the other country, according to the same principle.

**Paragraph 8** - This formula shows how the interest rate is calculated.

**Paragraph 9** - This provision specifies the interest rates to apply in the calculations described in the previous paragraphs. Note that the interest rates are the ones payable at the time each quarterly payment fell due, not the interest rates applicable when this adjustment is done.

**Paragraph 10** - The interest payment will be made together with the discrepancy payment. The discrepancy payment must be paid with the next quarterly payment that falls after the reconciliation, and as the reconciliation must be done by 30 September every year, the latest date at which the interest and reconciliation can be paid is on 1 October each year.

**Paragraph 11** - Allows payments between Australia and New Zealand to be "netted". This means that the countries will be able to work out what the net result of the transactions mentioned in paragraphs 6 and 7 would be and finalise it in a single payment by one country to the other.

**Paragraph 12** - For the purposes of "netting", it is necessary to determine an exchange rate. The exchange rate to be used is specified here.

**Paragraph 13** - specifies that each country will make its payment in the currency of the receiving country.

**Paragraph 14** - specifies that a reconciliation statement is final and no further claim for reimbursement is to be made in the same financial year.

**Paragraph 15** - specifies that Australia and New Zealand may agree to change the reimbursement procedures described in this Article in the light of practical experience. This may be done by an exchange of diplomatic notes.

## **PART IV**

### **MISCELLANEOUS PROVISIONS**

#### **ARTICLE 15 - Benefits for the Unemployed**

**Paragraph 1** - The provisions of this Article apply to any person in Australia who is a citizen of New Zealand and who has not obtained a permanent entry permit, and to any Australian citizen in New Zealand who has not obtained a migrant entry permit. Essentially, these are people who have entered the territory of the other country using the provisions of the Trans-Tasman Travel Arrangement (TTTA).

**Paragraph 2** - This provision continues the policy of Article 9 of the old Agreement, ie, new arrivals via the TTTA in each country have to wait 6 months before they can qualify for benefits for the unemployed.

In Australia, the *Migration Reform Act* (MRA) should come into effect in September 1994 and all New Zealanders will be issued with an electronic visa when they enter Australia to live, unless they are a "health or character concern" individual, in which case they will not be able to enter.

The result will be that New Zealanders will then be covered by the six month waiting period for JSA in the Act that applies to all other arrivals. As it is possible that the MRA might be

delayed, this provision has been included to ensure that the 6 month waiting period will apply anyway.

In New Zealand, there is a general 12 month waiting period for unemployment benefits for all new arrivals. The Agreement overrides this, so that entrants from Australia have to wait only 6 months.

**Paragraph 3** - If a relatively recent arrival to Australia (or New Zealand) was temporarily absent from Australia during their first 12 months here, it could be for any number of legitimate reasons and it should not result in the person having to serve a whole new 6 month waiting period again. If the absence was such that it did not break the person's period as an Australian resident, and the person can thereby be shown to have been an Australian resident for the previous 12 months prior to the claim, then the waiting period of 6 months does not apply. The same is true for people going from Australia to New Zealand.

**Paragraph 4** - This explains what "benefits for the unemployed" are, since the expression is not defined in the Agreement or in either country's legislation.

## **ARTICLE 16 - Mutual Assistance and Exchange of Information**

So that the Agreement can be administered properly, the two countries agree to help each other in claim processing, information exchange, administrative arrangements and dealing with enquiries from the public.

**Article 16, Paragraph 1** - Outlines what sort of information can be exchanged between Australia and New Zealand about individuals specifically for the administration of the reimbursement provisions. The general exchange of information provisions are in paragraph 6.

Note that **Sub-paragraph (a)** stipulates that before information can be exchanged, the person about whom we want to exchange information must already be granted a pension and it must be a reimbursable one. Paragraph 6 enables the countries to exchange information to verify if a pension is actually reimbursable.

To administer the reimbursement provisions, we need to establish that the pensioner would be qualified for a corresponding benefit in New Zealand and the rate of that hypothetical New Zealand payment.

**Sub-paragraph (b)** - Requires the parties to communicate about their procedures for implementation of the Agreement and changes to their legislation which may affect the operation of the Agreement. Australia's social security bills and amending legislation are sent regularly to New Zealand and vice versa. Informal information exchange on procedures and administrative practices also occurs. These practices will fulfil the requirement of this provision.

**Sub-paragraph (c)** - Requires Australia or New Zealand at the request of the other to assist people to claim foreign pensions from third countries with which we both have agreements, such as The Netherlands.

**Paragraph 2** - Provides for the help which Australia and New Zealand give each other under Article 16, paragraph 1, of the Agreement to be given free of charge, unless the authorities of both countries decide otherwise.

**Paragraph 3** - Australian and New Zealand laws protect the privacy of information collected for social security purposes. This paragraph ensures that information obtained through the Agreement's exchange of information provisions will be treated just as confidentially as any other information about clients obtained by DSS or the Department of Social Welfare (DSW).

**Paragraph 4, Sub-paragraph (a)** - Is a rarely invoked safety clause that allows either country the discretion to make an exception to the mutual assistance and exchange of information provisions where this would require them to do something which their legislation does not support or their administration was not set up for.

**Sub-paragraph (b)** - Both Australia and New Zealand have clearly defined legislation on what information can be obtained or sought about clients or potential clients. This provision underlines the fact that those information-gathering powers are not extended by this Agreement.

Under the provisions of this Agreement, we can exchange information that we already hold and have legitimately obtained, but we are not able to obtain extra information from third parties if that information is not required for the implementation of our Act.

**Paragraph 5** - This provision allows for electronic data transfer in the future, to facilitate the granting of benefits and the reimbursement process.

**Paragraph 6** - This is a general exchange of information provision, which allows the exchange of any information relevant to a pension or benefit payment under the Act or under the Agreement.

The exception to this is the New Zealand child support scheme, which is administered by DSW who use child support payments to offset payments of domestic purposes benefit (DPB). If New Zealand wants information about a DSS client but is not able to cite a reason for requesting the information other than matters relating to child support, the information cannot be supplied.

## **ARTICLE 17 - Administrative Arrangement**

It is usual for countries to make operational arrangements for the Agreement in a separate document, usually an Administrative Arrangement. This document is not part of the Agreement.

The working rules for agreements generally need fine tuning once they begin and may need changing when either or both parties change their administrative practices.

It is much easier to change the working rules if they are kept apart from the main treaty.

At any time, Australia and New Zealand can draw up additional documents that add to these arrangements.

## **ARTICLE 18 - Recovery of Overpayments**

**Paragraph 1** - This provision allows Australia and New Zealand to recover overpayments on each other's behalf, as under the previous agreement. The detailed mechanisms for the assistance are in the Administrative Arrangements.

**Paragraph 2** - This provision means that neither country can add on amounts to say, recover expenses or interest, if they are recovering the other country's overpayment.

**Paragraph 3** - This provision ensures that the country paying the benefit sets the recovery rate for overpayments.

**Paragraph 4** - The Administrative Arrangement details the frequency of remittances and the necessary reconciliation procedures.

**Paragraph 5** - There will be mutual assistance in recovery of overpayments for all of the benefits listed here, as well as those listed in Article 2.

## **ARTICLE 19 - Resolution of Difficulties**

**Paragraph 1** - This provides for the resolution of any difficulties in interpretation or application of the Agreement.

**Paragraph 2** - This specifies that the Parties should consult promptly at the request of one to the other.

## **ARTICLE 20 - Review of the Agreement**

**Paragraph 1** - This specifies that the Parties may agree to review the Agreement at any time.

**Paragraph 2** - This anticipates that, given the unique nature of this Agreement, there will be a need for a review within the first 12 months of its operation.

**Paragraph 3** - This provision ensures that there is consultation between the Parties on any amending legislation which might unbalance the reciprocal nature of the Agreement.

**Paragraph 4** - This specifies that the country which requests a review has to travel to the other country for the meeting, unless the countries agree otherwise.

## **PART V**

### **FINAL PROVISIONS**

#### **ARTICLE 21 - Transitional Provisions**

**Paragraph 1** - This provision exists to clarify that periods of residence or other events which occurred before the Agreement started can still be counted in this Agreement.

**Paragraph 2** - If a pension is granted under the provisions of this Agreement, the date of grant cannot be before this Agreement comes into force, even if the person would have otherwise qualified before that date.

**Paragraph 3** - The Agreement comes into force when both countries have completed all the necessary administrative arrangements and the legislation has been passed. In case this is not completed by 1 January 1995, the reimbursement provisions have been locked in to start from that date.

**Paragraph 4** - The provisions in this Agreement for the granting of pensions are slightly harsher than those in the old agreement, and there are a few people who qualified for pension under that Agreement who would not qualify under this Agreement. This provision ensures that current pension recipients are "saved" and do not lose their qualification for pension because of this Agreement.

**Paragraph 5** - Pensions granted under the old Agreement shall be treated as being paid under this Agreement. While a person cannot lose qualification under the new Agreement, they will be paid in accordance with the other general provisions of this Agreement. The main consequence of this in Australia is that some New Zealand agreement pensioners who receive foreign pensions (usually UK pensions) will have those pensions treated as direct deductions for the first time.

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

**Paragraph 1** - Sets out the arrangements for bringing the Agreement into operation. The aim is for the Agreement to come into force on 1 January 1995. Once the Agreement has been signed, the necessary laws passed or amended and the two countries have administrative support in place, the Foreign Ministry of each country will advise the other that the Agreement is ready to start. If this cannot be done by 1 January 1995, the agreement will come into force at a later date, as indicated. For example, if notes are exchanged on 15 March 1995, the Agreement would come into force on 1 May 1995.

**Paragraph 2** - This allows a further 12 month period of operation should Australia or New Zealand serve formal notice to terminate the Agreement.

**Paragraph 3** - Protects the entitlements of people who get or claim benefits before the Agreement has been terminated.

**Paragraph 4** - This provision ensures that if the Agreement is denounced by Australia or New Zealand, the reimbursements will continue to flow for those benefits that were reimbursable at the time the Agreement terminated.

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