

PROTECTED SENSITIVE

SOCIAL ISSUES

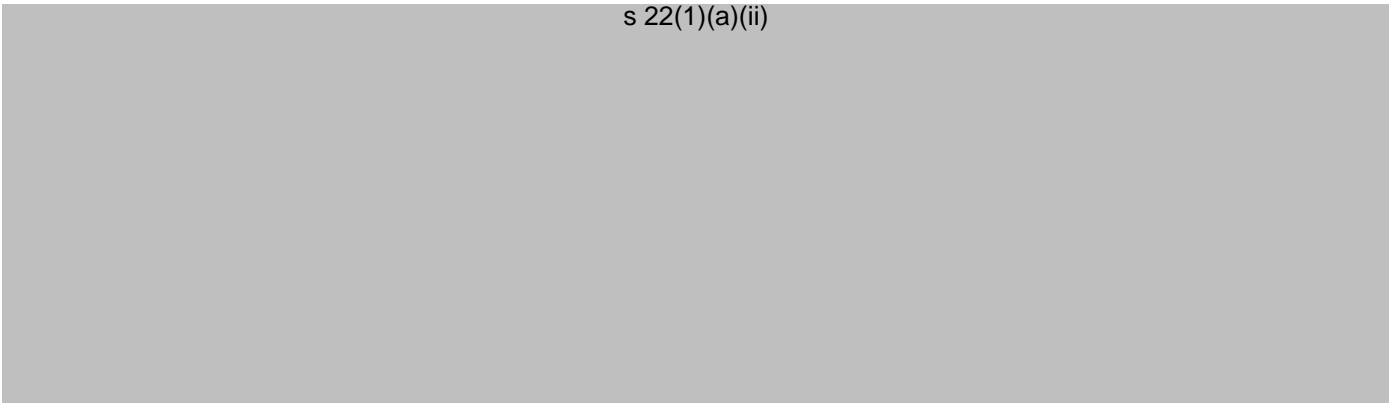
ISSUES BRIEF

s 22(1)(a)(ii)

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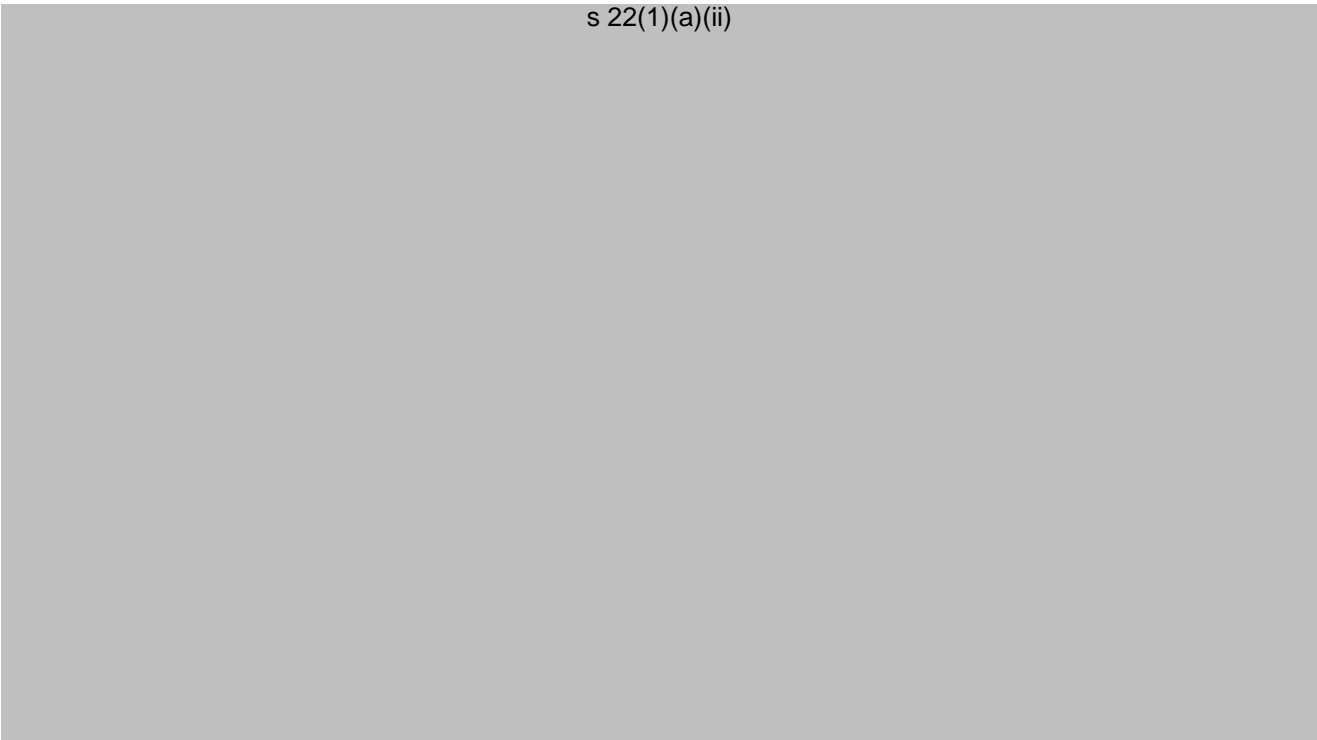
s 22(1)(a)(ii)



Revised social security agreement between Australia and New Zealand

3. The existing social security agreement with New Zealand is one of Australia's most significant. Under the agreement, New Zealand pays about \$263 million a year to pension recipients in Australia (as at June 2016). At the same time, Australia pays about \$56.4 million a year into New Zealand under the agreement (only Italy receives more), and about \$101 million to New Zealand citizens in Australia.
4. A revised social security agreement between Australia and New Zealand, announced in the 2016-17 Budget, was signed in Wellington on 8 December 2016. Both countries are aiming to implement the revised Agreement by 1 July 2017.
5. The main changes in the revised Agreement are: to limit what period of residence in New Zealand can be used to qualify for the disability support pension; to cater for the pending increases to the qualifying age for the Australian Age Pension which start from 1 July 2017; and to align portability of payments to third countries to current and future changes in social security law.

s 22(1)(a)(ii)



PROTECTED SENSITIVE



The Hon Christian Porter MP
Minister for Social Services

MS16-001066

30 SEP 2016

The Hon Malcolm Turnbull MP
Prime Minister
Parliament House
CANBERRA ACT 2600

Dear Prime Minister

A handwritten signature in black ink, appearing to read 'Prime Minister' or a similar phrase, written over the printed name.

I am writing to advise you that the text of the revised Agreement on Social Security between the Government of Australia and the Government of New Zealand (the Revised Agreement) has been finalised. A copy of the Revised Agreement is enclosed for your information.

I have written to the Minister for Foreign Affairs, the Hon Julie Bishop MP, and the Attorney-General, Senator the Hon George Brandis QC, seeking their approval of the text. Subject to that, I have requested that the Minister for Foreign Affairs seek approval from the Executive Council at the earliest opportunity for the signing of the Agreement.

Revising the Social Security Agreement with New Zealand was originally agreed as a decision taken but not announced in the 2014-15 Budget, as negotiations had not yet been completed. The measure was subsequently announced in the 2016-17 Budget. The Revised Agreement is estimated to save approximately \$16.1 million over the first four full years.

The Revised Agreement conforms with the basic principles of Australia's existing social security agreements and will continue to provide residents in both countries with improved access to relevant pensions. Amendments in the Revised Agreement accommodate changes in both countries' systems since the current Agreement commenced in 2002.

The Revised Agreement will clarify that only New Zealand working age residence can be used to qualify a person for Disability Support Pension (DSP). In 2013, the Full Federal Court held, in *Mahrous* ([2013] FCAFC 75), that any residence in New Zealand could be used to qualify a person for DSP, widening access beyond what was originally intended.

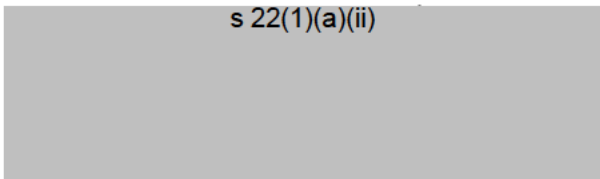
Further amendments cater for the pending increases to Australian Age Pension age (from 1 July 2017), align portability provisions with domestic legislation, and make administrative and technical changes.

It is hoped that the signing of the Revised Agreement can take place in November 2016.

Subject to the completion of relevant treaty and legislative processes in both countries, it is intended that the Revised Agreement come into force on 1 July 2017, or as soon as possible thereafter.

Yours sincerely

s 22(1)(a)(ii)



The Hon Christian Porter MP
Minister for Social Services

Encl.

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AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF
AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND

The Government of Australia, and

The Government of New Zealand

Referred to in this Agreement as “the Parties”

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

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

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

HAVE agreed as follows:

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- (ii) to work for at least the next 2 years; and
- (iii) unable to benefit within the next 2 years from participation in a program of assistance or a rehabilitation program; or
- (iv) is permanently blind;

For the avoidance of doubt, a person can be severely disabled even if they are not of working age.

- (n) “social security law” means,
 - (i) in relation to Australia, the *Social Security Act 1991*, the *Social Security (Administration) Act 1999* and the *Social Security (International Agreements) Act 1999*; and
 - (ii) in relation to New Zealand the *New Zealand Superannuation and Retirement Income Act 2001*, the *Social Security Act 2016* and the Orders in Council and Regulations made under those Acts;
- (o) “supported living payment” means a New Zealand payment on the grounds of sickness, injury, disability, or total blindness but does not include a payment on the grounds of caring for a person requiring full-time care;
- (p) “territory”, in relation to New Zealand, means: New Zealand only and not the Cook Islands, Niue or Tokelau; and, in relation to Australia, means: Australia as defined in the social security law of Australia; and references to “New Zealand”, “Australia” or the “territory” of either shall be read accordingly;
- (q) “third country” means a country other than Australia or New Zealand;
- (r) “third country pension” in relation to New Zealand, means an overseas pension as defined in the social security law of New Zealand and, in relation to Australia, means a comparable foreign payment as defined in the social security law of Australia;
- (s) “third country residence” has the meaning given to it under Article 5;
- (t) “working age residence” has the meaning given to it under Article 5;
- (u) “year” means 12 calendar months;
- (v) “1994 Agreement” means the Agreement on Social Security between the Government of New Zealand and the Government of Australia done at Wellington on 19 July 1994, as amended on 7 September 1995 and 2 July 1998;
- (w) “1994 Agreement benefit” means a benefit defined in the 1994 Agreement in Article 2, paragraph 1, subparagraphs (a)(i), (ii), (iii), (iv), (v), (vi) and (vii); and
- (x) “2001 Agreement” means the Agreement on social security between the Government of Australia and the Government of New Zealand, signed on the twenty-eighth day of March 2001 as amended by an Exchange of Notes completed on the twenty-first day of February 2002 (entered into force 1 July 2002).

2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the social security law of either Party.

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- (c) the nature and extent of the person's employment, business or financial ties with Australia;
 - (d) the nature and extent of the person's assets located in Australia;
 - (e) the frequency and duration of the person's travel outside Australia; and
 - (f) any other matter relevant to determining whether the person intends to remain permanently in Australia;
- and "residence in Australia" has a corresponding meaning.
2. "New Zealand resident" means, a person who has or had New Zealand as their principal place of residence except where that person was unlawfully resident or present in New Zealand or lawfully resident or present in New Zealand only by virtue of:
- (a) a visitor's permit;
 - (b) a temporary work permit; or
 - (c) a permit to be in New Zealand for the purposes of study at a New Zealand school or university or other tertiary educational establishment;
- and "residence in New Zealand" has a corresponding meaning.
3. "permanent resident of Australia" means a person who resides in Australia and is one of the following:
- (a) an Australian citizen;
 - (b) the holder of a permanent visa; or
 - (c) a protected special category visa holder as defined under the social security law of Australia.
4. "third country residence" means a period of residence when a person was not either an Australian resident or a New Zealand resident.
5. "working age residence" means a period of residence in the territory of a Party from the age of 20 until the qualifying age for age pension in Australia or the qualifying age for New Zealand Superannuation, whichever is relevant, (up to a maximum of 45 years). It does not include any period deemed pursuant to Article 8 or Article 12 to be a period in which a person was an Australian resident or a New Zealand resident. For the purposes of Articles 9, 10 and 13, if a person's period of working age residence would, apart from this point, be a number of whole months, or a number of whole months and a day or days, the period is to be increased so that it is equal to the number of months plus one month.

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7. No New Zealand benefit shall be granted to a person who is in receipt of a benefit under the 1994 Agreement at the time that this Agreement comes into force unless that person ceases to be in receipt of that 1994 Agreement benefit.
8. Except as provided in paragraph 9, a person who is ordinarily resident in Australia is not entitled to receive, or to continue to receive, a supported living payment if the person:
 - (a) reaches pension age under this Agreement; and
 - (b) is entitled to receive New Zealand superannuation or a veteran's pension, under this Article or otherwise.
9. A person who is ordinarily resident in Australia and is married, in a civil union, or in a de facto relationship, is not entitled to receive, or continue to receive, a supported living payment if both the person and his or her spouse or partner have reached pension age.

ARTICLE 7**Presence in New Zealand**

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

ARTICLE 8**Totalisation for New Zealand**

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

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ARTICLE 10

Rate of New Zealand Supported Living Payment in Australia

1. Except as provided in paragraph 2, when a person in Australia is entitled to receive New Zealand supported living payment under Article 6, the amount of that benefit shall be calculated in accordance with the following formula:

number of whole months of

$$\frac{\text{New Zealand working age residence} \times \text{maximum benefit rate}}{Y}$$

Where 'Y' equals the aggregate of the periods of working age residence in Australia and New Zealand at the date of severe disablement and subject to the following provisions:

- (a) all periods of working age residence in New Zealand shall be aggregated;
 - (b) the maximum benefit rate shall be:
 - (i) in the case of a single person, the maximum rate (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) of benefit that the person would be entitled to receive under the social security law of New Zealand before any abatement on account of income;
 - (ii) in the case of a person who is married, in a civil union or in a de facto relationship, the maximum rate (less a percentage agreed in writing from time to time by the competent authorities and published in the New Zealand Gazette) of benefit that the person would be entitled to receive under the social security laws of New Zealand before any abatement on account of income;
 - (c) in no case shall the rate of benefit exceed 100% of the maximum benefit rate as defined in subparagraph (b);
 - (d) except for a third country pension taken into account under subparagraph (e), or as provided in paragraph 2, no account shall be taken of any benefit that is payable under the social security law of Australia; and
 - (e) no account shall be taken of any third country pension if that person is a permanent resident of Australia.
2. The rate of supported living payment for a person who qualifies under Article 6 shall be calculated under paragraph 1, but the amount the person is entitled to receive shall not exceed:
 - (a) in the case of a single person, the amount of Australian disability support pension that would have been payable if that person was entitled to receive an Australian disability support pension but not entitled to receive a supported living payment; or
 - (b) in the case of a person who is married, in a civil union or in a de facto relationship, the aggregated amount of Australian disability support pension and carer payment that would have been payable if that person was entitled to an Australian disability support pension and his or her spouse or partner was entitled to a carer payment and that person had not been entitled to receive a supported living payment.

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- b. for the purposes of an Australian benefit payable to a person present long term in Australia there will be no minimum period.
4. A claimant for an age pension under this Agreement must be of pension age to be able to obtain the benefit of this Article.

ARTICLE 13**Calculation of Australian Benefits**

1. Where an Australian benefit is payable to a person, whether by virtue of the Agreement or otherwise, the rate of that benefit shall be determined under the social security law of Australia but when assessing the income of that person, no New Zealand benefit paid to that person shall be regarded as income, if the person is an Australian or New Zealand resident, while the person is in Australia or New Zealand or for the period of a temporary absence in a third country, or if the person resides in a third country and an Australian benefit is deducted from the rate of benefit payable by New Zealand. In all other situations, any New Zealand benefit received will be assessed as income.
2. Subject to paragraph 3, where an Australian benefit is payable, by virtue of this Agreement or otherwise, to a person who is present long term in Australia, the rate of that benefit shall be determined by:
 - (a) calculating that person's income according to the social security law of Australia but disregarding in that calculation the New Zealand benefit or benefits received by that person and, where applicable, any third country pension as provided in paragraph 7;
 - (b) applying the income test to the maximum rate of benefit as set out in the social security law of Australia, using as the person's income, the amount calculated under subparagraph (a); then
 - (c) deducting the amount of the New Zealand benefit or benefits, and where applicable any third country pension as provided in paragraph 7, received by that person from the rate of Australian benefit worked out under subparagraph (b).
3. A benefit paid under paragraph 2 shall continue to be calculated in the same way if the person goes to New Zealand and is not present long term there.
4. Where a member of a couple is, or both that person and his or her partner are, entitled to:
 - (a) a New Zealand benefit or benefits; and/or
 - (b) any third country pension;
 then each of them shall be deemed, for the purpose of this Article and for the social security law of Australia, to receive one half of either the amount of that benefit or the total of both of those benefits, as the case may be.
5. (a) Where an age pension is payable, by virtue of this Agreement or otherwise, to a person who is present long term in New Zealand and who has less than 10 years as a New Zealand resident, then the rate of that age pension shall be determined (subject to paragraph 1) in accordance with the following formula:

$$A = \frac{(540 - Z) \times R}{540}$$

where,

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9. A benefit paid under paragraphs 5, 6, or 8 shall continue to be calculated in the same way if the person goes to Australia and is not present long term there.
10. A benefit paid under paragraphs 2, 5, 6, or 8 shall continue to be calculated in the same way if the person goes to a third country temporarily. A benefit which is payable otherwise than by virtue of this Agreement shall be subject to the proportional calculation rules in the social security law of Australia for any period of temporary absence in a third country in excess of the period allowed for the payment of a benefit under this Agreement in Article 14. For a benefit which is payable otherwise than by virtue of this Agreement, the provisions regarding the assessment of any New Zealand benefit, and where applicable, any third country pension from the rate of Australian benefit, shall continue to apply as if the person was in Australia or New Zealand, as the case may be, for the period that the New Zealand benefit is payable under this Agreement in a third country.

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7. Where a person, who is in receipt of an Australian carer payment by virtue of this Agreement, goes to a third country temporarily, that benefit shall continue to be payable for the period that the social security law of Australia provides that a person who is absent from Australia remains entitled to the carer payment, disregarding any exceptions. At that time payment of the carer payment by virtue of this Agreement will cease. Carer payment will cease to be payable by virtue of this Agreement from the date of departure if the absence is permanent.

ARTICLE 15**Payment of Supplementary Benefits and Allowances**

1. Where a New Zealand resident becomes entitled to receive a New Zealand benefit under Article 8, the competent institution of New Zealand shall also pay to that person any supplementary benefit or allowance under the social security law of New Zealand for which that person is qualified.
2. Where an Australian resident becomes entitled to receive a New Zealand benefit under this Agreement,
 - (a) the amount of that benefit shall not include any supplementary benefit or allowance which would be payable under the social security law of New Zealand if that person were a New Zealand resident;
 - (b) no payment shall be made in advance of any number of instalments of that benefit, or part of it, not yet due.
3. Where an Australian resident qualifies for an Australian benefit under this Agreement or otherwise but the person's rate of Australian benefit is zero solely due to the operation of subparagraph 2(c) of Article 13, that person shall be deemed to be receiving an Australian benefit, as defined in Article 1(1)(b) and shall therefore be eligible to receive relevant and applicable concessions under the social security law of Australia.
4. Where a person outside of Australia is entitled to receive an Australian benefit under this Agreement, the amount of that benefit shall not include any supplementary benefit or allowance, except as payable to a person outside of Australia as provided by the social security law of Australia.

ARTICLE 16**Residence Issues**

1. Where there is doubt after having applied the definitions in Article 5 as to whether a person is a resident of Australia or New Zealand, the competent institutions of the Parties shall consult on the issue and shall decide in writing the country of residence of that person.
2. Upon the decision being made under paragraph 1, that person shall be deemed to be a resident of that country
3. If the facts on which a decision was made under paragraph 1 change in regard to the person, the competent institution of a Party may initiate action under paragraph 1 on the basis that there is new doubt as to the residency of the person.

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arrangements made pursuant to Article 21. The information supplied may include information that identifies any person, including the person's name, date of birth, sex, passport number, country of citizenship, the date or dates on which the person arrived or departed from Australia or New Zealand, and information identifying the aircraft or ship on which he or she arrived or departed, as the case may be.

3. The competent institutions shall communicate to each other, as soon as possible, in relation to each benefit granted by the other Party, all information in their possession or that they are lawfully able to obtain, that is required:
 - (a) to verify that the person in receipt of that benefit is eligible to receive it under the social security law of the Party granting the benefit;
 - (b) to verify the amount of benefit payable; and
 - (c) for the recovery of any social security debt under this Agreement.
4. The competent institutions shall, on request, assist each other in relation to the implementation of Agreements on social security entered into by either of the Parties with third countries, to the extent and in the circumstances specified in the administrative arrangements made pursuant to Article 21.
5. The assistance referred to in paragraphs 2 to 4 shall be provided subject to the terms and conditions set out in Part A of the Schedule of this Agreement, and free of charge except where specified in the Schedule or in the administrative arrangements made pursuant to Article 21.
6. Unless disclosure is required and is permitted under the laws of both Parties, then, except as provided in Part A of the Schedule of this Agreement, any information about an individual that is transmitted in accordance with this Agreement to a competent authority or a competent institution by the competent authority or competent institution of the other Party is confidential and shall be used only for the purposes of implementing this Agreement and the social security law of either Party.
7. Where an exchange of information authorised under this Article is of a kind to which Part X of the *New Zealand Privacy Act 1993* or the *Privacy Act 1988 of Australia* would apply, the administrative arrangements shall, in accordance with Part A of the Schedule of this Agreement:
 - (a) include provisions that ensure, in relation to New Zealand, that the safeguards that are required under New Zealand privacy laws in information matching agreements are complied with and that the arrangements are consistent with the information matching rules under New Zealand privacy laws;
 - (b) include provisions that ensure, in relation to Australia, that the safeguards that are required under Australian privacy laws in information matching agreements are complied with and that the arrangements are consistent with the information matching rules under Australian privacy laws; and
 - (c) list the items of information that each Party may request under this Article.
8. Any information transmitted in accordance with this Agreement to a competent institution shall be protected in the same manner as information obtained under the social security law of the receiving Party.
9. No term in this Article shall affect the obligations of the Parties under Article 24.

ARTICLE 19

Recovery of Overpayments

1. For Australia where:

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7. The competent institution that is making deductions or is about to make deductions under paragraph 4 shall also accept any regular or lump sum payment from the person concerned for the purposes of repaying the excess benefit received by that person.

Restitution

8. The amounts deducted or received by the competent institution of one of the Parties in accordance with paragraphs 3, 4 or 7 shall be remitted to the other competent institution as agreed between the competent institutions or in administrative arrangements made pursuant to Article 21.
9. Recovery of overpayments by either Party under this Agreement shall be subject to the terms and conditions set out in Part B of the Schedule of this Agreement.

ARTICLE 20**Limitations**

In no case shall the provisions of this Part be construed so as to impose on the competent institution of a Party the obligation to carry out administrative measures at variance with the laws or the administrative practices of that or the other Party.

ARTICLE 21**Administrative Arrangements**

The competent authorities of the Parties shall establish by means of administrative arrangements the measures necessary for the implementation of this Agreement.

ARTICLE 22**Currency**

1. Payments under this Agreement may be made validly in the currency of the Party making the payment.
2. Money transfers made under this Agreement shall be made in accordance with any relevant arrangements in effect between the Parties at the time of transfer.
3. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement. Those measures shall operate retrospectively to the time the restrictions were imposed.
4. A Party that imposes restrictions described in paragraph 3 shall inform the other Party of those restrictions within one calendar month of their imposition and shall adopt the measures described in paragraph 3 within three months of the imposition of those restrictions. If the other Party is not so informed, or if the necessary measures are not adopted within the set time, the other Party may treat such a failure as a material breach of the Agreement and as sufficient justification for termination or suspension of the Agreement between the Parties.
5. A benefit payable by a Party by virtue of this Agreement to a person outside the territory of that Party shall be paid without deduction for government administrative fees and charges for processing and paying that benefit.

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ARTICLE 27

Entry into Force and Termination

1. The Agreement shall enter into force on 1 July 2017 provided that the Parties have notified each other by notes exchanged through the diplomatic channel that all matters necessary to give effect to this Agreement have been completed; otherwise it shall come into force on the first day of the third month following the date of the last such notification.
2. Subject to paragraph 3, this Agreement shall remain in force until either:
 - (a) the expiration of 12 months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of either Party to terminate the Agreement; or
 - (b) the date of entry into force of a later treaty between the Parties relating to the same subject matter as this Agreement, and which the Parties intend shall govern that same subject matter in place of this Agreement.
3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who by virtue of this Agreement:
 - (a) at the date of termination, are in receipt of benefits; or
 - (b) prior to the expiry of the period referred to in subparagraph (a), have lodged claims for, and would be entitled to receive, benefits.

IN WITNESS WHEREOF, the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

DONE in two copies in the English language at PLACE on this DATE day of MONTH 20XX.

FOR THE GOVERNMENT
OF AUSTRALIA

FOR THE GOVERNMENT
OF NEW ZEALAND

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- g. a Party must supply the competent institution of the other Party with any information required by that institution to answer any questions or to make any report or return required by a person or body authorised to monitor compliance with that Party's privacy laws.
2. In relation to New Zealand, section 99(4) of the Privacy Act 1993 applies, with any necessary modifications, to an agreement between the competent institutions of the Parties under clause 1(d).

Part B**Terms and conditions for recovery of social security debts**

1. The terms and conditions referred to in Article 19 of the Agreement are:
- a. assistance to recover any social security debt of a Party may be provided by the other Party only in respect of a debt:
 - i. that has been found or determined to be owing in the country concerned by a court or tribunal having jurisdiction in the matter, or by a person, body, or organisation in that country acting administratively within the terms of his, her, or its lawful authorisation; and
 - ii. in respect of which any right of review or appeal of the determination of the debt, under the law under which the debt was determined (other than a right of judicial review or complaint under laws relating to administrative decisions generally, or under human rights laws),:
 - A. has been exhausted or has expired; or
 - B. if there is no time limit for the exercise of any such right, has not been exercised, or has been exercised and the review or appeal has been finally determined; and
 - iii. that may be lawfully recovered under the laws of that country; and
 - iv. that was first found or determined to be owing less than 5 years prior to the date that the request for assistance is made, except as provided in clause 2;
 - b. when providing assistance to recover any social security debt of a Party, the Party giving the assistance is not required to:
 - i. give priority to the recovery of social security debts of the other Party; and
 - ii. take any measures for recovery not provided for under the laws relating to the recovery of debts of that Party;
 - c. a Party may not seek to recover a social security debt by imprisonment of the individual by whom it is owed or of any other individual;
 - d. any recovery of a social security debt of a deceased individual is limited to the value of that individual's estate;
 - e. any institution, court, or tribunal involved in the recovery of a social security debt may defer recovery of the debt, or may order or arrange for the debt to be paid in instalments, if:
 - i. the institution, court, or tribunal has the power to do so; and
 - ii. it is its normal practice to do so;