



LGB 02/22

The Department of Foreign Affairs and Trade of Australia presents its compliments to the New Zealand High Commission and has the honour to refer to the latter's note of 20 February 2002, which reads as follows:

The New Zealand High Commission presents its compliments to the Department of Foreign Affairs and Trade of Australia and has the honour to refer to the Agreement on Social Security between the Government of Australia and the Government of New Zealand, done at Canberra on 28 March 2001 (hereinafter referred to as "the Agreement") and to subsequent discussions between the two Governments over its amendment.

The High Commission has the further honour to propose that, on the basis of the aforementioned discussions, the following amendments to the text of the Agreement be agreed:

- 1 Article 2 of the Agreement is amended by inserting the words "*the New Zealand Superannuation Act 2001*," after "New Zealand:" in paragraph 1(b).
- 2 Article 6 of the Agreement is amended by renumbering paragraph 5 as paragraph 7, and by inserting new paragraphs 5 and 6 as follows:
 - "5. A New Zealand benefit which would otherwise be payable to a person in New Zealand shall continue to be payable for up to 26 weeks after the person's departure from New Zealand if that person departs New Zealand to reside in Australia and:
 - (a) applies to receive New Zealand superannuation under the Agreement within 26 weeks of arrival in Australia; or
 - (b) applies to receive an invalid's benefit under the Agreement within 4 weeks of arrival in Australia.
 - "6. If an application referred to in paragraph 5 is granted under the Agreement, the rate of the New Zealand benefit payable after the date of grant shall be the rate payable in accordance with the Agreement. If the application is declined, the New Zealand benefit first referred to in that paragraph shall only be payable in Australia after the date of that decision if the person is entitled to receive that payment under New Zealand domestic law."
- 3 Article 8 of the Agreement is amended by deleting paragraph 4, and substituting the following paragraph:

- "4. The minimum period in Australia to be taken into account for the purposes of:

- (a) paragraph 1, shall be 12 months working age residence, of which at least 6 months must be continuous; and
- (b) paragraph 2, shall be 12 months residence, of which at least 6 months must be continuous.”

4 Article 9 of the Agreement is amended by deleting paragraph 2; and renumbering paragraphs 3 and 4 as 2 and 3 respectively.

5 Article 11 of the Agreement is amended by adding as paragraphs 3 and 4 the following paragraphs:

- “3. If a person applies for a carer payment under this Agreement, references to Australia in the provisions of the social security law of Australia relating to qualification for carer payment shall be read also as references to New Zealand.
- “4. If a person is qualified for a carer payment under this Agreement, that person can receive that payment if that person has an aggregate period of residence of at least 2 years in Australia and/or New Zealand.”

6 Article 12 of the Agreement is amended by deleting paragraph 3, and substituting the following paragraph:

- “3. The minimum period of Australian working age residence to be taken into account for the purposes of paragraph 1(b) shall be as follows:
 - (a) for the purposes of an Australian benefit payable to a person residing outside Australia, the minimum period shall be one year of which at least 6 months must be continuous; but
 - (b) for the purposes of an Australian benefit payable to an Australian resident, there will be no minimum period.”

7 Article 17 of the Agreement is amended by adding a new paragraph that shall read as follows:

- “4. After the entry into force of this Agreement, a claim by a person for a benefit under the social security law of one Party shall be deemed to be a claim for the corresponding benefit under the social security law of the other Party provided that:
 - (a) if the claimant is applying for an age pension or New Zealand superannuation, he or she is over 65 years of age;
 - (b) the claimant:
 - (i) requests that the claim be considered an application under the social security law of the other Party; or
 - (ii) provides information at the time of the application indicating that he or she has completed a period of working age residence in the other country; and
 - (c) the competent institution receiving the claim forwards the claim for that corresponding benefit to the other competent institution within three months of receiving that claim.”

8 Article 18 of the Agreement is amended:

- (a) by inserting in paragraph 2, after the word “possession”, the words “or that they are lawfully able to obtain”;
- (b) by adding to the end of paragraph 2 the words “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 in 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.”;

- (c) by inserting in paragraph 3, after the word “possession”, the words “or that it is lawfully able to obtain, that is”;
- (d) by inserting in paragraph 5, after the word “provided”, the words “subject to the terms and conditions set out in Part B of the Schedule of this Agreement, and”;
- (e) by inserting in paragraph 5, after the words “specified in”, the words “the Schedule or in the”;
- (f) by inserting in paragraph 6, after the word “Parties,”, the words “ then, except as provided in Part B of the Schedule of this Agreement,”;
- (g) by inserting in paragraph 7, after the word “shall”, the words “, in accordance with Part B of the Schedule of this Agreement,”; and
- (h) by omitting from paragraph 9 the expression “25”, and substituting the expression “24”.

9 Article 19 of the Agreement is amended by adding the following paragraph:

“9. Recovery of overpayments by either Party under this Agreement shall be subject to the terms and conditions set out in Part A of the Schedule of this Agreement.”

10 Article 23 of the Agreement is deleted and no substitution for it is made; and the subsequent Articles 24 to 28 are renumbered as 23 to 27.

11 Article 25 of the Agreement (as renumbered) is amended by deleting from paragraph 1 the expression “28”, and substituting the expression “27”.

12 The Agreement is amended by adding at its end as a Schedule of the Agreement, the following Schedule:

“Schedule

Part A

Terms and conditions for recovery of social security debts

- 1 The terms and conditions referred to in Article 19 of the Agreement are:
 - (a) assistance to recover any social security debt of a party may be provided by the other party only in respect of a debt:
 - (i) that has been found or determined to be owing in the country concerned by a court or tribunal having jurisdiction in the matter, or by a person, body, or organisation in that country acting administratively within the terms of his, her, or its lawful authorisation; and
 - (ii) in respect of which any right of review or appeal of the determination of the debt, under the law under which the debt was determined (other than a right of judicial review or complaint under laws relating to administrative decisions generally, or under human rights laws):
 - (A) has been exhausted or has expired; or
 - (B) if there is no time limit for the exercise of any such right, has not been exercised, or has been exercised and the review or appeal has been finally determined; and
 - (iii) that may be lawfully recovered under the laws of that country; and
 - (iv) that was first found or determined to be owing less than 5 years prior to the date that the request for assistance is made, except as provided in clause 2;
 - (b) when providing assistance to recover any social security debt of a party, the party giving the assistance is not required to:
 - (i) give priority to the recovery of social security debts of the other party; and
 - (ii) take any measures for recovery not provided for under the laws relating to the recovery of debts of that party;
 - (c) a party may not seek to recover a social security debt by imprisonment of the individual by whom it is owed or of any other individual;
 - (d) any recovery of a social security debt of a deceased individual is limited to the value of that individual's estate;
 - (e) any institution, court, or tribunal involved in the recovery of a social security debt may defer recovery of the debt, or may order or arrange for the debt to be paid in instalments, if:
 - (i) the institution, court, or tribunal has the power to do so; and
 - (ii) it is its normal practice to do so;
 - (f) a party may give assistance only in respect of a social security debt that the requesting institution has certified is of a kind described in subparagraphs (i) to (iv) of paragraph (a);
 - (g) the party requesting assistance to recover a social security debt must pay the costs of the other party of recovering the debt, including court costs or other fees payable under the laws of that party. For the purposes of this paragraph, “costs of the other party” refer only to costs incurred (such as solicitor’s fees) if court action is taken to recover the debt and do not include the administrative costs of a party.
- 2 For the purpose of clause 1(a)(ii), a right of review or appeal under the law under which a debt was determined has expired:
 - (a) if the right has not been exercised within the time limit provided for its exercise; and
 - (b) irrespective of whether the court or tribunal or body or person that would have jurisdiction in respect of the review or appeal, or any other person, retains a discretion (however expressed in that law) to allow the right of review or appeal to be exercised after that time.
- 3 Where any institution, court, or tribunal defers the recovery of a social security debt, or orders or arranges for a social security debt to be paid by instalments, the 5-year period referred to in clause 1(a)(iv) is extended by the period of deferral or, as the case requires, the period over which the debt is to be paid by instalments.

Part B**Terms and conditions for exchange of information for social security purposes**

- 1 The terms and conditions referred to in Article 18 of the Agreement are—
 - (a) a request for information relating to an individual may be made only for social security purposes;
 - (b) the requested institution of a party may supply to the requesting institution such information on the person to whom the request relates as it holds or is lawfully able to obtain;
 - (c) the requesting institution of a party (the “requesting party”) to whom information is supplied by the requested institution of the other party may supply that information to the taxation authorities of the requesting party for either or both of the following purposes:
 - (i) making an assessment of the tax due by any person under the laws of the requesting party relating to taxation;
 - (ii) detecting tax fraud or tax evasion under the laws of the requesting party;
 - (d) every request for and supply of information made by and to the competent institutions of the parties must be made in terms of an agreement between the competent institutions of the parties that:
 - (i) specifies the types of information that the competent institutions may supply to each other; and
 - (ii) limits the supply of information to the types of information specified; and
 - (iii) subject to subparagraph (iv), in relation to New Zealand, contains, with all necessary modifications, the safeguards required to be set out in an information matching agreement within the meaning of section 99 of the Privacy Act 1993; and
 - (iv) in relation to New Zealand, requires the information matching rules set out in clause 4 of the Schedule 4 of the Privacy Act 1993, with all necessary modifications, to be applied; and
 - (v) in relation to New Zealand, has been agreed to by the Privacy Commissioner under the Privacy Act 1993, the Commissioner having had regard to the information matching guidelines in section 98 of that Act;
 - (e) subject to paragraphs (b) and (c), any information supplied by a party to the other party must be subject to the same privacy protections as any other personal information obtained under the social security laws of the other party;
 - (f) no party that receives, under the Agreement, personal information about any individual from the competent institution of the other party may supply that information to any other country without the prior written consent of that competent institution or the individual concerned;
 - (g) a party must supply the competent institution of the other party with any information required by that institution to answer any questions or to make any report or return required by a person or body authorised to monitor compliance with that party's privacy laws.

- 2 In relation to New Zealand, section 99(4) of the Privacy Act 1993 applies, with any necessary modifications, to an agreement between the competent institutions of the parties under clause 1(d).”

The New Zealand High Commission has the honour to propose that, if the foregoing is acceptable to the Government of Australia, this note, and the Department’s note in reply, shall together constitute an Exchange of Notes Amending the Agreement, which shall enter into force on the date on which the Agreement enters into force.

The New Zealand High Commission avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade of Australia the assurances of its highest consideration.

New Zealand High Commission

CANBERRA

The Department of Foreign Affairs and Trade of Australia has the honour to advise that the foregoing is acceptable to the Government of Australia and that, accordingly, the High Commission's note and this note in reply shall together constitute an Exchange of Notes Amending the Agreement on Social Security between the Government of Australia and the Government of New Zealand, done at Canberra in 28 March 2001, which shall enter into force the date on which the Agreement enters into force.

The Department of Foreign Affairs and Trade avails itself of this opportunity to renew to the New Zealand High Commission the assurances of its highest consideration.

CANBERRA
21 February 2002

The New Zealand High Commission presents its compliments to the Department of Foreign Affairs and Trade of Australia and has the honour to refer to the Agreement on Social Security between the Government of Australia and the Government of New Zealand, done at Canberra on 28 March 2001 (hereinafter referred to as “the Agreement”) and to subsequent discussions between the two Governments over its amendment.

The High Commission has the further honour to propose that, on the basis of the aforementioned discussions, the following amendments to the text of the Agreement be agreed:

1 Article 2 of the Agreement is amended by inserting the words “the *New Zealand Superannuation Act 2001*,” after “New Zealand:” in paragraph 1(b).

2 Article 6 of the Agreement is amended by renumbering paragraph 5 as paragraph 7, and by inserting new paragraphs 5 and 6 as follows:

- “5. A New Zealand benefit which would otherwise be payable to a person in New Zealand shall continue to be payable for up to 26 weeks after the person’s departure from New Zealand if that person departs New Zealand to reside in Australia and:
- (a) applies to receive New Zealand superannuation under the Agreement within 26 weeks of arrival in Australia; or
 - (b) applies to receive an invalid’s benefit under the Agreement within 4 weeks of arrival in Australia.

- “6. If an application referred to in paragraph 5 is granted under the Agreement, the rate of the New Zealand benefit payable after the date of grant shall be the rate payable in accordance with the Agreement. If the application is declined, the New Zealand benefit first referred to in that paragraph shall only be payable in Australia after the date of that decision if the person is entitled to receive that payment under New Zealand domestic law.”

3 Article 8 of the Agreement is amended by deleting paragraph 4, and substituting the following paragraph:

- “4. The minimum period in Australia to be taken into account for the purposes of:

- (a) paragraph 1, shall be 12 months working age residence, of which at least 6 months must be continuous; and
- (b) paragraph 2, shall be 12 months residence, of which at least 6 months must be continuous.”

4 Article 9 of the Agreement is amended by deleting paragraph 2; and renumbering paragraphs 3 and 4 as 2 and 3 respectively.

5 Article 11 of the Agreement is amended by adding as paragraphs 3 and 4 the following paragraphs:

- “3. If a person applies for a carer payment under this Agreement, references to Australia in the provisions of the social security law of Australia relating to qualification for carer payment shall be read also as references to New Zealand.
- “4. If a person is qualified for a carer payment under this Agreement, that person can receive that payment if that person has an aggregate period of residence of at least 2 years in Australia and/or New Zealand.”

6 Article 12 of the Agreement is amended by deleting paragraph 3, and substituting the following paragraph:

- “3. The minimum period of Australian working age residence to be taken into account for the purposes of paragraph 1(b) shall be as follows:
 - (a) for the purposes of an Australian benefit payable to a person residing outside Australia, the minimum period shall be one year of which at least 6 months must be continuous; but
 - (b) for the purposes of an Australian benefit payable to an Australian resident, there will be no minimum period.”

7 Article 17 of the Agreement is amended by adding a new paragraph that shall read as follows:

- “4. After the entry into force of this Agreement, a claim by a person for a benefit under the social security law of one Party shall be deemed to be a claim for the corresponding benefit under the social security law of the other Party provided that:
 - (a) if the claimant is applying for an age pension or New Zealand superannuation, he or she is over 65 years of age;
 - (b) the claimant:
 - (i) requests that the claim be considered an application under the social security law of the other Party; or
 - (ii) provides information at the time of the application indicating that he or she has completed a period of working age residence in the other country; and
 - (c) the competent institution receiving the claim forwards the claim for that corresponding benefit to the other competent institution within three months of receiving that claim.”

8 Article 18 of the Agreement is amended:

- (a) by inserting in paragraph 2, after the word “possession”, the words “or that they are lawfully able to obtain”;

- (i) by adding to the end of paragraph 2 the words “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 in 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.”;
- (j) by inserting in paragraph 3, after the word “possession”, the words “or that it is lawfully able to obtain, that is”;
- (k) by inserting in paragraph 5, after the word “provided”, the words “subject to the terms and conditions set out in Part B of the Schedule of this Agreement, and”;
- (l) by inserting in paragraph 5, after the words “specified in”, the words “the Schedule or in the”;
- (m) by inserting in paragraph 6, after the word “Parties,”, the words “ then, except as provided in Part B of the Schedule of this Agreement,”;
- (n) by inserting in paragraph 7, after the word “shall”, the words “, in accordance with Part B of the Schedule of this Agreement,”; and
- (o) by omitting from paragraph 9 the expression “25”, and substituting the expression “24”.

9 Article 19 of the Agreement is amended by adding the following paragraph:

“9. Recovery of overpayments by either Party under this Agreement shall be subject to the terms and conditions set out in Part A of the Schedule of this Agreement.”

13 Article 23 of the Agreement is deleted and no substitution for it is made; and the subsequent Articles 24 to 28 are renumbered as 23 to 27.

14 Article 25 of the Agreement (as renumbered) is amended by deleting from paragraph 1 the expression “28”, and substituting the expression “27”.

15 The Agreement is amended by adding at its end as a Schedule of the Agreement, the following Schedule:

[Proposed Schedule]

“Schedule

Part A

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):
 - (C) has been exhausted or has expired; or
 - (D) 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:
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 - (ii) take any measures for recovery not provided for under the laws relating to the recovery of debts of that party;
 - (c) a party may not seek to recover a social security debt by imprisonment of the individual by whom it is owed or of any other individual;
 - (d) any recovery of a social security debt of a deceased individual is limited to the value of that individual's estate;
 - (e) any institution, court, or tribunal involved in the recovery of a social security debt may defer recovery of the debt, or may order or arrange for the debt to be paid in instalments, if:
 - (i) the institution, court, or tribunal has the power to do so; and
 - (ii) it is its normal practice to do so;
 - (f) a party may give assistance only in respect of a social security debt that the requesting institution has certified is of a kind described in subparagraphs (i) to (iv) of paragraph (a);
 - (g) the party requesting assistance to recover a social security debt must pay the costs of the other party of recovering the debt, including court costs or other fees payable under the laws of that party. For the purposes of this paragraph, “costs of the other party” refer only to costs incurred (such as solicitor’s fees) if court action is taken to recover the debt and do not include the administrative costs of a party.
- 4 For the purpose of clause 1(a)(ii), a right of review or appeal under the law under which a debt was determined has expired:
- (c) if the right has not been exercised within the time limit provided for its exercise; and
 - (d) irrespective of whether the court or tribunal or body or person that would have jurisdiction in respect of the review or appeal, or any other person, retains a discretion (however expressed in that law) to allow the right of review or appeal to

be exercised after that time.

- 5 Where any institution, court, or tribunal defers the recovery of a social security debt, or orders or arranges for a social security debt to be paid by instalments, the 5-year period referred to in clause 1(a)(iv) is extended by the period of deferral or, as the case requires, the period over which the debt is to be paid by instalments.

Part B

Terms and conditions for exchange of information for social security purposes

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 - (c) the requesting institution of a party (the “requesting party”) to whom information is supplied by the requested institution of the other party may supply that information to the taxation authorities of the requesting party for either or both of the following purposes:
 - (i) making an assessment of the tax due by any person under the laws of the requesting party relating to taxation;
 - (ii) detecting tax fraud or tax evasion under the laws of the requesting party;
 - (d) every request for and supply of information made by and to the competent institutions of the parties must be made in terms of an agreement between the competent institutions of the parties that:
 - (i) specifies the types of information that the competent institutions may supply to each other; and
 - (ii) limits the supply of information to the types of information specified; and
 - (iii) subject to subparagraph (iv), in relation to New Zealand, contains, with all necessary modifications, the safeguards required to be set out in an information matching agreement within the meaning of section 99 of the Privacy Act 1993; and
 - (iv) in relation to New Zealand, requires the information matching rules set out in clause 4 of the Schedule 4 of the Privacy Act 1993, with all necessary modifications, to be applied; and
 - (v) in relation to New Zealand, has been agreed to by the Privacy Commissioner under the Privacy Act 1993, the Commissioner having had regard to the information matching guidelines in section 98 of that Act;
 - (e) Subject to paragraphs (b) and (c), any information supplied by a party to the other party must be subject to the same privacy protections as any other personal information obtained under the social security laws of the other party;
 - (f) no party that receives, under the Agreement, personal information about any individual from the competent institution of the other party may supply that information to any other country without the prior written consent of that competent institution or the individual concerned;
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- 3 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).”

The New Zealand High Commission has the honour to propose that, if the foregoing is acceptable to the Government of Australia, this note, and the Department's note in reply, shall together constitute an Exchange of Notes Amending the Agreement, which shall enter into force on the date on which the Agreement enters into force.

The New Zealand High Commission avails itself of this opportunity to renew to the Department of Foreign Affairs and Trade of Australia the assurances of its highest consideration.

New Zealand High Commission

CANBERRA

20 February 2002