

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND  
THE GOVERNMENT OF THE UNITED STATES OF AMERICA FOR  
THE ENFORCEMENT OF MAINTENANCE (SUPPORT) OBLIGATIONS**

**Documents tabled on 18 June 2002:**

- **National Interest Analysis**
- **Text of the proposed treaty action**

# **Agreement between the Government of Australia and the Government of the United States of America for the Enforcement of Maintenance (Support) Obligations**

## **NATIONAL INTEREST ANALYSIS**

### **Proposed binding treaty action**

1. It is proposed that Australia enter into an Agreement between the Government of Australia and the Government of the United States of America for the Enforcement of Maintenance (Support) Obligations (“the Agreement”) and bring the treaty into force through an exchange of notes.

### **Date of proposed binding treaty action**

2. As provided by Article 10, the Agreement will enter into force when the USA and Australia have notified each other that their requirements for the Agreement's entry into force have been met. It is proposed that Australia will give such a notification as soon as practicable after tabling.

### **Date of tabling of the proposed treaty action**

3. The Agreement is to be tabled on 18 June 2002. It is being tabled prior to signature with the agreement of both parties. The treaty will be signed as soon as possible.

### **Summary of the purpose of the proposed treaty action and why it is in the national interest**

4. The purpose of the Agreement is to provide reciprocal arrangements between Australia and the USA for establishing and enforcing child support and spousal maintenance liabilities. It will benefit Australian children and their parents by facilitating the payment of child support and spousal maintenance.

## **Reasons for Australia to take the proposed treaty action**

5. The Agreement will benefit Australia by providing for treaty obligations with the whole of the USA. Currently, non-treaty arrangements exist between Australia and some individual States of the USA for the establishment and enforcement of child support and spousal maintenance liabilities.
6. These previous arrangements with individual States were devised on the basis that all maintenance liabilities were in the form of orders made, or agreements registered, by a court. Replacement of these arrangements is appropriate since they are unsuited to the current situation in Australia in which maintenance ordered by a court is gradually being replaced by administrative assessments of child support that are issued by the Child Support Agency (which is an agency of Australia's Department of Family and Community Services).
7. Thus a major benefit of the Agreement to Australian recipients of child support is that the Agreement provides for the reciprocal enforcement of administrative assessments of child support as well as enforcement of court orders and registered agreements.
8. Another benefit of the Agreement is that it will assist Australian parents by providing for the appointment in the USA of a federal Central Authority. The Central Authority will have responsibility for coordinating action by US State government agencies on requests by Australian claimants for assistance in obtaining child support and spousal maintenance. In the past Australian courts and claimants have been concerned about wide variations in the effectiveness of laws and procedures in US States for obtaining maintenance.

## **Obligations**

9. The Agreement requires that Australian law provide for the recognition and enforcement of child support and spousal maintenance decisions of judicial and administrative authorities of the USA. In addition the Agreement requires the recognition and enforcement of registered maintenance agreements (agreements made between parents and lodged with a court or with the Child Support Agency). A similar obligation will be imposed on the USA in respect of recognition and enforcement of Australian decisions in the USA (Article 7).
10. The Agreement obliges each country to appoint a Central Authority which will take responsibility for coordinating all agencies (Article 3) and will take follow up action on all maintenance cases referred for enforcement (Article 5).
11. A Central Authority (or other designated public body) will be obliged to transmit applications and supporting documents to the Central Authority in the other country (Article 4). Authorities in both countries will be obliged to take all appropriate steps to recover monies payable under maintenance and child support liabilities (Article 5). Any monies collected are to be paid to the Central Authority of the other country for payment to the claimant or for other disbursement in accordance with the laws of that country. This is to be free of charge to claimants (Article 6).
12. The Agreement also requires the recognition of parentage determinations or, in the absence of recognition, requires that steps be taken on behalf of the parent to establish parentage (Article 7).

13. In carrying out their tasks under the Agreement the Parties must provide each other with assistance and information within the limits of their respective laws (Article 4).

### **Implementation**

14. The Agreement will be implemented in Australia by the Child Support Agency, which will administratively enforce USA child support assessments, court maintenance orders, registered agreements and penalties. The Agency will also send applications for recognition and enforcement of Australian liabilities to the USA Central Authority, which will pass the liabilities to US State judicial and administrative authorities for enforcement.

15. No additional legislation is required to implement the Agreement. Provisions to implement the Agreement are already in force under the *Child Support (Assessment) Act 1989* (section 163B), the *Child Support (Registration and Collection) Act 1988* (section 124A) and the *Family Law Act 1975* (sections 110-110B and 124A).

### **Costs**

16. There are no significant additional financial implications arising from the proposed treaty. This is because the Australian Government is already meeting the cost of enforcing some USA maintenance decisions in Australia and of obtaining from maintenance payers in the USA payments for Australian claimants. Further, as outlined below, conclusion of the treaty may have a number of savings implications for agencies in Australia currently involved in overseas maintenance enforcement.

17. As the Agreement provides for the recognition and enforcement of administrative liabilities, it will allow Australian authorities to send child support assessments to the United States for registration and enforcement. This may result in a saving in expenditure of Australian legal aid funds which are at present spent in obtaining Australian court orders for claimants when maintenance and child support payers move to the USA from Australia. It may also mean a reduction in payments by the Attorney-General's Department to the States for the use of State courts in family law matters.

18. Currently, Attorney-General's Department funds are spent in obtaining Australian maintenance orders in expensive and lengthy applications to Australian courts on behalf of overseas claimants. The Agreement may reduce the costs of actions by Australian authorities to obtain maintenance for such USA claimants. These actions will be replaced by speedy and relatively inexpensive administrative enforcement of USA liabilities by the Australian Child Support Agency under the Agreement.

19. It is not proposed to establish any new agencies to deal with matters arising under the Agreement. The Child Support Agency will undertake the role of coordinating communications between Australian payees/payers and government authorities in the USA.

### **Consultation**

20. In November 1999 the Attorney-General's Department published an issues paper "*International Child Support Enforcement - Proposed New Treaty Arrangements*". The paper

outlined the purpose and effect of the Agreement, proposed arrangements for its implementation in Australia and sought comments on whether Australia should enter into the Agreement. The paper was circulated to State and Territory law Departments, legal aid bodies, the Family Court of Australia, the Family Court of Western Australia, the Family Law Council, the Law Council of Australia, State and Territory law societies and bar councils, family law practitioners associations and groups interested in child support policy issues. No comments were received in response to the proposals in relation to the proposed USA Agreement.

21. The Agreement has been advised to the States and Territories through the Commonwealth State-Territory Standing Committee on Treaties.

### **Regulation Impact Statement**

22. No Regulation Impact Statement is required for the proposed treaty action.

### **Future treaty action: amendments, protocols, annexes and other legally binding instruments**

23. The Agreement does not specify how it may be amended, but under Article 39 of the *Vienna Convention on the Law of Treaties* such a treaty may be amended by agreement between its parties. Any such proposed amendment would be subject to Australia's standard treaty-making procedures.

24. Article 2.3 of the Agreement provides that the remedies provided for in the Agreement are not exclusive and do not preclude either country from entering into international agreements addressing these issues.

### **Withdrawal or denunciation**

25. Article 11 of the Agreement provides that the Agreement may be terminated by either party giving notice in writing through the diplomatic channel. The Agreement terminates on receipt of the notification. Any proposal by Australia to terminate the Agreement would be subject to Australia's standard treaty-making procedures.

26. No treaty obligations will exist after the date of termination.

### **Contact Details**

Civil Justice Division  
Attorney-General's Department

Child Support Agency  
Department of Family  
and Community Services