

**EXCHANGE OF NOTES AMENDING THE AGREEMENT ON
SOCIAL SECURITY BETWEEN THE GOVERNMENT OF
AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND,
DONE AT CANBERRA ON 28 MARCH 2001**

Documents tabled on 12 March 2002:

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

Exchange of Notes Amending the Agreement on Social Security between the Government of Australia and the Government of New Zealand, done at Canberra on 28 March 2001

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed that the Social Security Agreement with New Zealand ("the Agreement"), done at Canberra on 28 March 2001 be amended.
2. The Agreement is not yet in force. Following the signing of the Agreement, and subsequent discussions on the administrative arrangements it became necessary to amend the text. The Parties agreed the necessary amendments would be done through the Exchange of Notes.

Date of proposed binding treaty action

3. The Exchange of Notes took place in Canberra on 20 and 21 February 2002. The Exchange of Notes provides that the Exchange of Notes will enter into force on the date on which the Agreement enters into force. In accordance with Article 28(1) the Exchange of Notes amending the Agreement shall enter into force on the date on which the Agreement enters into force.
4. The Joint Standing Committee on Treaties recommended binding treaty action be taken in relation to the Agreement in its Report 41 of August 2001. This National Interest Analysis addresses the amendments to the Agreement contained in the Exchange of Notes.

Date of the tabling of the proposed treaty action

5. 12 March 2002

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

6. The amendments primarily relate to changes in New Zealand social security legislation that now require bilateral social security treaties to contain specific reference to manner in which information is to be exchanged and overpayments are to be raised under the treaty. The amendments do not alter the policy underpinning the Agreement and will not alter the costs or savings that the Agreement in its original form was expected to achieve.

Reasons for Australia to take the proposed treaty action

7. The initial request to amend the Agreement was made by New Zealand. Recently passed New Zealand legislation requires its international treaties to contain references to the manner in which information is exchanged and overpayments are to be raised by the administering competent institution in relation to benefits paid under the terms of treaties such as this social security agreement. New Zealand officials have indicated that without amendments they cannot implement the Agreement. In addition during negotiations for the Administrative Arrangements New Zealand negotiators realized they had left out critical paragraphs that overcome domestic legislation that restricts payments outside New Zealand. This oversight would have meant that despite other clauses, New Zealand domestic law would have had made payments into Australia impossible.

8. Given the two critical amendments required by New Zealand Australian negotiators took the opportunity to make the provisions for paying Australian Carer pension more explicit as well as the period of residence in Australia needed before qualification. Finally while the two countries had initially imagined that a common exchange rate was going to be required, discussions after the agreement was signed meant that the use of agreed exchange rates was made redundant. Therefore the clauses relating to the use of agreed exchange rates were deleted.

Obligations

9. The specific amendments to the agreement that affects Australia are the deletion of Article 23 concerning use of mutual exchange rate, Article 11 concerning the payment of Carer payment and Article 12 concerning the clarification of the minimum periods of residence before a claim can be made in Australia.

10. The obligations for New Zealand are varied in:

Article 2 where they insert the correct name for their new legislation;

Article 6 where they insert two new paragraphs dealing with the grant and continued payment of New Zealand pensions in Australia;

Article 9 where the paragraph that attempts to artificially establish a rate of partners is deleted;

Article 17 where a claim for one countries benefit is deemed to be a claim for the other;

Article 18 where the Article is brought into line with revised New Zealand law;

Article 19 where the Agreement is extended to include a Schedule which contains the provisions required by New Zealand privacy law.

None of the above obligations create any obligations for Australia, other than those outlined in paragraph 9 above.

Regulation Impact Statement

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

Implementation

12. A new schedule to the *Social Security (International Agreements) Act 1999*, incorporating the full text of the Agreement and Exchange of Notes, will be required to implement the Agreement. This will be done by:

- Amending the Agreement on Social Security between Australia and New Zealand at Schedule 3 to the Act by substituting a new Schedule 3 (the Agreement on Social Security between Australia and New Zealand done at Canberra on 28 March 2001) and
- Amending the Agreement on Social Security between Australia and New Zealand at new Schedule 3 to the Act by adding the Exchange of Notes of 20 and 21 February 2002 to new Schedule 3

Costs

13. The proposed amendments will not alter the costs or savings of the Agreement.

Consultation

14. During the consultation process the Agreement was circulated widely together with an explanation of how it would work prior to tabling on 23 May 2001. No further consultation is thought to be necessary as the how the agreement works, and its benefits and obligations have not changed.

Future treaty action: amendments, protocols, annexes or other legally binding instruments.

15. The Exchange of Notes does not amend the Agreement's amendment procedure.

Withdrawal or denunciation

16. The Exchange of Notes does not amend the Agreement's provisions relating to withdrawal.

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