

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Social Security)

A BILL

FOR

**An Act to amend the *Social Security Act 1991* in relation to
the signing of a new social security agreement with
New Zealand**

The Parliament of Australia enacts:

Short title etc.

1.(1) This Act may be cited as the *Social Security (New Zealand Agreement) Amendment Act 1994*.

5 (2) In this Act, "**Principal Act**" means the *Social Security Act 1991*¹.

Commencement

2.(1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

*Social Security (New Zealand Agreement)
Amendment No. , 1994*

(2) Section 4 commences on the day on which the Agreement set out in the Schedule comes into force under Article 22 of that Agreement.

General power to obtain information

3. Section 1304 of the Principal Act is amended by adding at the end of subsection (1):

“; or (d) the administration of an agreement between Australia and a foreign country on social security matters.”.

5

Repeal of Schedule 4 and substitution of new Schedule 4

4. Schedule 4 to the Principal Act is repealed and the Schedule set out in the Schedule to this Act is substituted.

10

THE SCHEDULE

Section 4

NEW SCHEDULE 4 TO THE *SOCIAL SECURITY ACT 1991*

SCHEDULE 4

Section 1208

AGREEMENT

between

THE GOVERNMENT OF AUSTRALIA

and

THE GOVERNMENT OF NEW ZEALAND

ON SOCIAL SECURITY

SCHEDULE—continued

The Government of Australia

and

The Government of New Zealand

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

and

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

and

WISHING to modify the Agreement providing for matters relating to social security which they entered into on the 31st day of October 1988 by means of a consolidated document,

HAVE agreed as follows:

SCHEDULE—continued

PART I
GENERAL PROVISIONS

Article 1

Interpretation

1. In this Agreement, unless the context otherwise requires:
 - (a) **“benefit”** means in relation to a Party, any of the benefits, pensions or allowances listed in Article 2(1), and includes any amount, increase or supplement that is payable in addition to that benefit, pension or allowance to or in respect of a person who is eligible for that amount, increase or supplement under the legislation of that Party;
 - (b) **“competent authority”** means,
in relation to Australia:
the Secretary to the Department of Social Security; and
in relation to New Zealand:
the Director-General of Social Welfare or an authorised representative of the Director-General;
 - (c) **“competent institution”** means,
in relation to Australia:
the Department of Social Security; and
in relation to New Zealand:
the New Zealand Income Support Service of the Department of Social Welfare;
 - (d) **“financial year”** means, except in the case of the first financial year, the period from 1 July of any year to 30 June of the next year;
 - (e) **“first financial year”** means the period from 1 January 1995 to 30 June 1995;
 - (f) **“foreign pension”** means, in relation to a person, any payment made to that person under the national social security, social welfare or social insurance law of a third state;
 - (g) **“legislation”** means,
in relation to Australia, the law specified in subparagraph 1(a) of Article 2; and
in relation to New Zealand, the laws specified in subparagraph 1(b) of Article 2;

SCHEDULE—continued

- (h) **“month”** means, except as provided in Article 12, a calendar month, but where days are aggregated a month means 30 days;
 - (i) **“period of Australian working life residence”** means, in relation to Australia, a period defined as such in the legislation of Australia but also includes any period during which the person to whom it relates, relied on Article 4(1)(b) of the agreement signed at Canberra on 31 October 1988 or relies on Article 8(2)(b)(ii) or (iii) to be eligible for an Australian benefit;
 - (j) **“period of New Zealand working life residence”** means, in relation to New Zealand, a period of ordinary residence in New Zealand between the ages of 16 and 65 but includes any period during which the person to whom it relates, relied on Article 4(1)(b) of the agreement signed at Canberra on 31 October 1988 or relies on Article 7(2)(b)(ii) or (iii) to be eligible for a New Zealand benefit;
 - (k) **“ordinarily resident”** has, in relation to New Zealand, the meaning and interpretation given to it under the laws of New Zealand;
 - (l) **“partner”** means, in relation to New Zealand, spouse;
 - (m) **“territory”** means,
 - in relation to Australia: Australia as defined in the legislation of Australia; and
 - in relation to New Zealand: New Zealand only and not the Cook Islands, Niue or Tokelau;
 - and references to “Australia”, “New Zealand” or the “territory” of either shall be read accordingly;
 - (n) **“year”** means 12 calendar months.
2. Any term not defined in this Article shall, unless the context otherwise requires, have the meaning given to it in the legislation of either Party or, in the event of a conflict of meanings, by whichever of those laws is the more applicable in the circumstances.

SCHEDULE—continued

Article 2

Legislative Scope

1. Except as provided under paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any legislation that subsequently amends, supplements, consolidates or replaces them:
 - (a) in relation to Australia: the Social Security Act 1991 in so far as the Act provides for, applies to or affects the following benefits:
 - (i) age pension;
 - (ii) disability support pension;
 - (iii) widow B pension;
 - (iv) sole parent pension;
 - (v) wife pension; and
 - (vi) additional family payment payable to persons in receipt of the above benefits; and
 - (b) in relation to New Zealand: the Social Security Act 1964 and the Social Welfare (Transitional Provisions) Act 1990 in so far as they provide for, apply to or affect the following benefits:
 - (i) New Zealand superannuation;
 - (ii) veteran's pension;
 - (iii) invalids benefit;
 - (iv) widows benefit; and
 - (v) domestic purposes benefit for solo parents.
2. This Agreement shall apply to laws or regulations which extend the existing legislation to other categories of beneficiaries only if the two Parties so agree in a formal amendment to this Agreement.

SCHEDULE—continued

Article 3

Personal Scope

1. This Agreement shall apply to any person who:
 - (a) is or has been an Australian resident; and
 - (b) is or has been ordinarily resident in the territory of New Zealand; andto any other person who derives rights to a benefit from a person who is eligible for a benefit under this Agreement.
2. This Agreement shall not apply to persons who are unlawfully in the territory of a Party.
3. No person shall be considered to have been resident, present, ordinarily resident or to have acquired working life residence in the territory of either Party for any period during which that person was unlawfully in the territory of a Party.

SCHEDULE—continued

Article 4

Equality of Treatment

Except as provided in this Agreement, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations which arise whether directly under the legislation of that Party or by virtue of this Agreement.

SCHEDULE—continued

PART II

PROVISIONS RELATING TO BENEFITS

Article 5

Corresponding Benefits

1. For the purposes of this Agreement:
 - (a) the Australian age pension corresponds to New Zealand superannuation and veteran's pension;
 - (b) the Australian age pension paid to a woman who would receive a widows benefit if she was in New Zealand shall correspond to a New Zealand widows benefit;
 - (c) the Australian disability support pension corresponds to the New Zealand invalids benefit;
 - (d) the Australian widow B pension corresponds to the New Zealand widows benefit paid to persons without dependent children; and
 - (e) the Australian sole parent pension corresponds to the New Zealand domestic purposes benefit for solo parents and widows benefit paid to persons with dependent children.

SCHEDULE—continued

Article 6

Partner Related Benefits

1. A person who receives a benefit under the legislation of either Australia or New Zealand, due to the fact that the partner of that person receives a benefit by virtue of this Agreement, shall be considered to be receiving that benefit under this Agreement.
2. If a person is eligible for and is receiving a New Zealand benefit under the legislation of New Zealand independently of that person's partner who is receiving a New Zealand benefit by virtue of this Agreement, that person shall not be considered to be receiving his or her benefit under this Agreement.
3. If a person is eligible for and is receiving an Australian benefit under the legislation of Australia independently of that person's partner who is receiving an Australian benefit by virtue of this Agreement, that person shall not be considered to be receiving his or her benefit under this Agreement.

SCHEDULE—continued

Article 7

Eligibility for New Zealand Benefits by Former Residents of Australia

1. A person who does not meet the residence criteria for New Zealand superannuation but would otherwise be eligible for that benefit under the legislation of New Zealand shall be eligible for New Zealand superannuation if that person:
 - (a) has reached the age of eligibility under the legislation of New Zealand or under the legislation of Australia for a corresponding benefit, whichever is the later age;
 - (b) is one of the following:
 - (i) ordinarily resident in New Zealand;
 - (ii) present in New Zealand and has the intention of remaining in New Zealand for at least one year; or
 - (iii) present in New Zealand and has been present in New Zealand for at least one yearat the date of grant of that benefit;
 - (c) either:
 - (i) was an Australian resident immediately before arriving in New Zealand; or
 - (ii) was, on entry into New Zealand, the holder of a valid Australian passport; and
 - (d) had been an Australian resident for a period of not less than 10 years, or an aggregate of 10 years, after age 16.
2. A person who does not meet the residence criteria for any New Zealand benefit (other than New Zealand superannuation) but who would otherwise be eligible for that benefit under the legislation of New Zealand shall be eligible for that benefit if that person:
 - (a) has reached the age of eligibility under the legislation of New Zealand or under the legislation of Australia, for the corresponding benefit, whichever is the later age;
 - (b) is one of the following:
 - (i) ordinarily resident in New Zealand;
 - (ii) present in New Zealand and has the intention of remaining in New Zealand for at least one year; or
 - (iii) present in New Zealand and has been present in New Zealand for one yearat the date of grant of that benefit;

SCHEDULE—continued

- (c) either:
- (i) was an Australian resident immediately before arriving in New Zealand; or
 - (ii) was, on entry into New Zealand, the holder of a valid Australian passport; and
- (d) had been an Australian resident for a period of not less than 10 years or an aggregate of 10 years.
3. No person other than a widower shall be eligible for a domestic purposes benefit for solo parents by virtue of this Agreement or the legislation of New Zealand if that person's right to remain in New Zealand is dependent on that person being an Australian citizen or a former Australian resident, unless that person, immediately before the claim for benefit was lodged has either:
- (a) been continuously present in New Zealand for at least 26 weeks; or
 - (b) been ordinarily resident in New Zealand for a period of at least 12 months.
4. Nothing in this Article or Article 8 shall affect the eligibility of a person who is in receipt of a New Zealand benefit under the temporary absence provisions under the legislation of New Zealand.
5. No person shall be eligible for a New Zealand benefit at the same time as he or she is in receipt of an Australian benefit.
6. A person shall not be eligible for a benefit under this Agreement or under the legislation of New Zealand if that person fails to supply the competent authority of Australia or New Zealand with any information to which that person has access and which is legally required to establish:
- (a) eligibility for a benefit under this Agreement; or
 - (b) the amount which the Government of Australia is required to reimburse the Government of New Zealand under this Agreement.

SCHEDULE—continued

Article 8

**Eligibility for Australian Benefits by Former Residents of
New Zealand**

1. A person who does not meet the residence criteria for an age pension but who would otherwise be eligible for that benefit under the legislation of Australia shall be eligible for an age pension if that person:
 - (a) has reached the age of eligibility under the legislation of Australia or under the legislation of New Zealand, for a corresponding benefit, whichever is the later age;
 - (b) is one of the following:
 - (i) an Australian resident;
 - (ii) in Australia and has the intention of remaining in Australia for at least one year; or
 - (iii) in Australia and has been in Australia for one year at the date of grant of that benefit;
 - (c) either:
 - (i) was ordinarily resident in New Zealand immediately before arriving in Australia; or
 - (ii) was, on entry into Australia, a New Zealand citizen; and
 - (d) had been ordinarily resident in New Zealand for a period of not less than 10 years, or an aggregate of 10 years, after age 16.
2. A person who does not meet the residence criteria for an Australian benefit (other than an age pension) but who would otherwise be eligible for that benefit under the legislation of Australia shall be eligible for that benefit if that person:
 - (a) has reached the age of eligibility under the legislation of Australia or under the legislation of New Zealand for a corresponding benefit, whichever is the later age;
 - (b) is one of the following:
 - (i) an Australian resident;
 - (ii) in Australia and has the intention of remaining in Australia for at least one year; or
 - (iii) in Australia and has been in Australia for one year at the date of grant of that benefit;
 - (c) either:
 - (i) was ordinarily resident in New Zealand immediately before arriving in Australia; or
 - (ii) was, on entry into Australia, a New Zealand citizen; and

SCHEDULE—continued

- (d) had been ordinarily resident in New Zealand for a period of not less than 10 years or an aggregate of 10 years.
3. No person other than a widow or a widower shall be eligible for a sole parent pension by virtue of this Agreement or the legislation of Australia if that person's right to remain in Australia is dependent on that person being a New Zealand citizen, unless that person, immediately before the claim for benefit was lodged, has either:
- (a) been continuously present in Australia for at least 26 weeks; or
 - (b) been an Australian resident for a period of at least 12 months.
4. Subject to this Agreement, a person who is ordinarily resident in New Zealand shall not be eligible for an Australian portable benefit where that person would be eligible for a New Zealand benefit.
5. A person who is present, but not ordinarily resident, in New Zealand shall not be eligible for an Australian portable benefit after a period which exceeds the period of temporary absence allowable for the corresponding New Zealand benefit under the legislation of New Zealand.
6. Where, at the date this Agreement comes into force, a person is ordinarily resident in or present in New Zealand and is in receipt of an Australian benefit, the competent authority of New Zealand shall calculate the rate of its benefit as if that Australian benefit was not being received and Australia shall cease paying its benefit to that person on any date New Zealand grants its benefit to that person.
7. No person shall be eligible for an Australian benefit at the same time as he or she is in receipt of a New Zealand benefit.
8. A person shall not be eligible for a benefit under this Agreement or under the legislation of Australia if that person fails to supply the competent authority of Australia or New Zealand with any information to which that person has access and which is legally required to establish:
- (a) eligibility for a benefit under this Agreement; or
 - (b) the amount which the Government of New Zealand is required to reimburse the Government of Australia under this Agreement.

SCHEDULE—continued

Article 9

Calculation of Rates of Benefits

1. Except as provided in paragraphs 2 and 3, if a benefit is payable by a Party under this Agreement, the amount of that benefit will be determined according to the legislation of that Party.
2. If a person who is receiving a benefit under this Agreement, is also in receipt of a foreign pension, that pension shall not be regarded as income, but the maximum rate of benefit otherwise payable to that person shall be reduced by the amount of the foreign pension.
3. For the purposes of paragraph 2, if a person receiving a benefit has a partner:
 - (a) in relation to Australia, each partner shall be considered to receive one half of the total of any foreign pensions received by either partner; and
 - (b) in relation to New Zealand, any foreign pension received by that person only shall be directly deducted first from the rate of New Zealand benefit payable to that person and then any excess shall be directly deducted from the rate of New Zealand benefit payable to that person's partner and any foreign pension received by that person's partner shall be directly deducted first from the rate of New Zealand benefit payable to that partner and then any excess shall be directly deducted from the rate of New Zealand benefit payable to that person.
4. Where members of a couple are in receipt of respectively, New Zealand and Australian benefits, each Party shall, when calculating the rate of benefit payable, disregard the amount of benefit paid by the other Party to the other member of the couple.

SCHEDULE—continued

Article 10

Residence in Third States

1. If a person who has been an Australian resident and has been ordinarily resident in New Zealand is residing in a third State with which both, or either, Australia or New Zealand have or has a bilateral social security agreement:
 - (a) any benefit from New Zealand for which that person is eligible shall not be considered as income or directly deducted in assessing the rate of any Australian benefit for which that person is eligible; and
 - (b) any benefit from Australia for which that person is eligible shall not be considered as income or directly deducted in assessing the rate of any New Zealand benefit for which that person is eligible.

SCHEDULE—continued

PART III

REIMBURSEMENT PROVISIONS

Article 11

Criteria for Reimbursement of Benefits

1. Except as provided in Article 13 and paragraph 3 of this Article, the Government of New Zealand shall reimburse the Government of Australia, on and from 1 January 1995, in accordance with the provisions of Article 12, for any benefit paid to a person who:
 - (a) has a period of Australian working life residence of less than 10 years;
 - (b) either:
 - (i) had been ordinarily resident in New Zealand immediately before arriving in Australia; or
 - (ii) was, on entry into Australia, the holder of a valid New Zealand passport;
 - (c) had been ordinarily resident in New Zealand for a period of not less than 10 years or an aggregate of 10 years;
 - (d) would be eligible for a corresponding benefit from New Zealand if that person had been resident in New Zealand;
 - (e) is an Australian resident and in Australia or is in receipt of a benefit by virtue of Article 8(1)(b)(ii) or (iii) or Article 8(2)(b)(ii) or (iii); and
 - (f) last became an Australian resident on or after 1 January 1983.
2. Except as provided under Article 12 and paragraph 3 of this Article, the Government of Australia shall reimburse the Government of New Zealand, on and from 1 January 1995, for any benefit paid to a person who:
 - (a) has a period of New Zealand working life residence of less than 10 years;
 - (b) either:
 - (i) had been an Australian resident immediately before arriving in New Zealand; or
 - (ii) was, on entry into New Zealand, the holder of a valid Australian passport;
 - (c) had been resident in Australia for a period of not less than 10 years or an aggregate of 10 years;

SCHEDULE—continued

- (d) would be eligible for a corresponding benefit from Australia if that person had been resident in Australia;
 - (e) is resident and present in New Zealand or is in receipt of a benefit by virtue of Article 7(1)(b)(ii) or (iii) or Article 7(2)(b)(ii) or (iii); and
 - (f) last became ordinarily resident in New Zealand on or after 1 January 1983.
3. Neither Party shall be required to reimburse the other Party for any sole parent pension or domestic purposes benefit payable to a person, other than a widow or widower, if that person has been in receipt of a sole parent pension for a period of less than 12 consecutive months.
 4. Working life residence shall continue to be accruable during any period a benefit (other than age pension or New Zealand superannuation) is paid by either Australia or New Zealand.
 5. Neither Party shall be required to reimburse the other Party for a benefit paid to a person who is outside the territory of the Party paying the benefit for a period which exceeds the period of temporary absence allowable under the legislation of New Zealand in respect of that benefit or a corresponding benefit.
 6. Any Australian benefit, as defined in Article 1 of this Agreement, payable by virtue of the former Agreement at the date on which this Agreement comes into force, shall be reimbursable by the Government of New Zealand at a rate calculated under Article 12 of this Agreement.

SCHEDULE—continued

Article 12

Rate of Reimbursement of Benefits

1. The amount a Party shall be required to reimburse the other Party for a benefit under Article 11 shall be calculated as follows:
 - (a) by dividing the number of whole months of working life residence in the reimbursing country of the person receiving the benefit by:
 - (i) 480 in the case of an age pension; and
 - (ii) 300 in the case of any other benefit; and
 - (b) by multiplying the results under subparagraph (a) by the nominal benefit rate.
2. The nominal benefit rate shall be calculated as follows:
 - (a) in relation to an Australian age pension, either:
 - (i) the amount of age pension actually paid; or
 - (ii) the rate of New Zealand superannuation that is payable under the legislation of New Zealand:
 - A. in the case of a single person living alone the rate payable to a single person who is living alone;
 - B. in the case of a single person not living alone the rate payable to a single person who is not living alone;
 - C. in the case of a married person whose partner is not receiving a wife pension, the rate payable to a married person whose spouse is also eligible for New Zealand superannuation in his or her own right;
less an amount equal to the income of that person as it exceeds the applicable New Zealand superannuation thresholds under the Income Tax Act of 1976, multiplied by the prevailing rate of the New Zealand superannuation surcharge; or
 - D. in the case of a married person whose partner is receiving a wife pension, the rate payable to a married person whose spouse is not eligible for New Zealand superannuation in his or her own right and who elects to receive the income tested rate applicable after 1 April 1991;
whichever is the lesser amount;
 - (b) in relation to other Australian benefits, either:
 - (i) the amount of Australian benefit actually paid; or

SCHEDULE—continued

- (ii) the rate of the corresponding New Zealand benefit (after the New Zealand income test applicable to that benefit has been applied) which would be payable if that person was resident in New Zealand;

whichever is the lesser amount;

- (c) in relation to New Zealand superannuation, either:

- (i) the amount of New Zealand superannuation actually paid, less (except where the rate of payment is subject to an income test under the legislation of New Zealand) an amount equal to the income of that person as it exceeds the applicable New Zealand superannuation thresholds under the Income Tax Act of 1976, multiplied by the prevailing rate of the New Zealand superannuation surcharge; or

- (ii) the rate of age pension, after the income and assets tests applicable to that person had been applied, which would be payable if that person was resident in Australia;

whichever is the lesser amount; and

- (d) in relation to other New Zealand benefits, either:

- (i) the amount of New Zealand benefit actually paid; or
- (ii) the rate of the corresponding Australian benefit (after the Australian income and assets tests applicable to the benefit have been applied) which would be payable if that person was resident in Australia;

whichever is the lesser amount.

3. For the purposes of paragraph (2) the income on which any income test is applied to determine the nominal benefit rate of a person shall not include the amount of the benefit actually paid, any additional amount or supplement or any foreign pension paid to that person or that person's partner.
4. If a person's period of working life residence would be 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.
5. Neither Party shall be required to reimburse the other for any additional amount or supplement that is paid to a person who is in receipt of a benefit under this Agreement and in determining the nominal benefit rate, an amount of benefit actually paid or rate of benefit shall not include any additional amount or supplement.

SCHEDULE—continued

6. In the case of a married couple, each partner shall be assessed individually for the purposes of deciding whether that person's benefit is reimbursable under Article 11 and estimating the rate of reimbursement under this Article.

SCHEDULE—continued

Article 13

Phase-in Provisions

1. In respect of benefits which were granted before 1 January 1995, for the first 4 financial years, each Party shall be required to reimburse the other Party for only a percentage of the amount which is reimbursable under Article 12 in respect of those benefits (in this Article called “the reimbursable amount of the historical group”). That percentage shall be calculated as follows:
 - (a) 15% of the reimbursable amount of the historical group for the first financial year ending on 30 June 1995;
 - (b) 40% of the reimbursable amount of the historical group for the financial year ending on 30 June 1996;
 - (c) 60% of the reimbursable amount of the historical group for the financial year ending on 30 June 1997; and
 - (d) 80% of the reimbursable amount of the historical group for the financial year ending on 30 June 1998;and thereafter shall pay the full reimbursable amount.
2. Notwithstanding paragraph (1)(a) above, the amount to be reimbursed by a Party for the financial year ending on 30 June 1995, under that paragraph shall be at least equal to the amount that would have been reimbursed by that Party under the 1988 Agreement between the Parties.
3. A Party shall reimburse the other Party the full amount to be reimbursed by it under Article 12 for all benefits granted by the other Party on or after 1 January 1995.

SCHEDULE—continued

Article 14

Reimbursement Procedures

1. At least 2 months before the start of the financial year, while any benefit is reimbursable under this Agreement, the competent institution of Australia shall supply the competent institution of New Zealand with a written estimate of the amount of the reimbursement for that financial year and the competent institution of New Zealand shall supply the competent institution of Australia with a written estimate of the amount of the reimbursement for that financial year, except in respect of the first financial year, when the estimate shall be made at least 2 months before 1 January 1995.
2. The amount the competent institution of a Party is required to pay to the competent institution of the other Party for a financial year, during that financial year, shall equal the amount that the other Party estimated under paragraph 1.
3. Subject to paragraph 4, the amount determined in paragraph 1 shall be payable in equal quarterly instalments by the competent institution of a Party to the competent institution of the other Party on 1 July, 1 October, 1 January and 1 April.
4. In regard to amounts to be reimbursed by each Party in the first financial year of operation of this Agreement, the full amount determined in paragraph 1 shall be payable within 3 months of 1 January 1995.
5. Within 3 months after the end of the financial year or the first financial year:
 - (a) the competent institution of Australia shall provide the competent institution of New Zealand with a written reconciliation statement covering the amounts estimated as payable under paragraph 1 and the amounts actually reimbursable in that financial year; and
 - (b) the competent institution of New Zealand shall provide the competent institution of Australia with a written reconciliation statement covering the amounts estimated as payable under paragraph 1 and the amounts actually reimbursable in that financial year.
6. If the reconciliation statements referred to in paragraph 5 show that an amount is payable by one Party to the other to balance the payments in the relevant financial year, then that amount shall be paid, together with any interest payable under paragraph 7, at the time of the next quarterly payment referred to in paragraph 3.

SCHEDULE—continued

7. If at the end of a financial year a Party is required to make a payment to the other Party under paragraph 6, then interest will be payable on the total amount outstanding. The total interest payable shall be the sum of the four amounts of interest payable in respect of each quarterly reimbursement period referred to in paragraph 3, calculated using the formula in paragraph 8.
8. In respect of each quarterly reimbursement period referred to in paragraph 3, the interest payable under paragraph 7 shall be calculated on the following basis:

$$\text{Interest Payable} = NP \times (N \times I) / 365$$

where:

NP = Nominal payment equal to one quarter of the amount payable by a Party to the other to balance the payments in the relevant financial year.

N = The number of days between the date at which the nominal payment would have been paid if no estimation error had occurred (ie, the commencement of the relevant quarter) and the date the payment is settled.

I = The relevant interest rate referred to in paragraph 9.

9. For the purposes of paragraph 8, the “relevant interest rate” shall be:
 - (a) in the case of refunds made by the Government of Australia, the 26 week New Zealand Government Treasury Bill rate expressed in per annum terms obtained in the regular Treasury Bill auction closest in time to when the nominal payment would have been paid if the estimation under paragraph 1 had been exact; and
 - (b) in the case of refunds made by the Government of New Zealand, the 180 day Australian Government Treasury Bill rate expressed in per annum terms applicable at the time the nominal payment would have been paid if the estimation under paragraph 1 had been exact.
10. Any interest payable under paragraph 7 in respect of a financial year shall be payable at the same time as the payment under paragraph 6.
11. For administrative purposes, the gross quarterly amounts payable by each Party (comprising the estimated reimbursable amount for the next quarter under paragraph 3 and any nominal payment under paragraph 6 and associated interest payments under paragraph 7) shall be netted between the two Parties.

SCHEDULE—continued

12. For the purposes of netting in paragraph 11, the relevant cross rate between the Australian dollar and the New Zealand dollar shall be determined by using the mid-rates as quoted at 3 pm on the ASAP page of Reuters, or equivalent page, 5 working days prior to the relevant quarterly settlement date.
13. For net payment purposes, the Government of Australia shall reimburse the Government of New Zealand in New Zealand dollars and the Government of New Zealand shall reimburse the Government of Australia in Australian dollars.
14. If a Party has forwarded to the other Party a reconciliation statement referred to in paragraph 5, that Party shall not be entitled to claim any further reimbursement for benefit payments made in that financial year.
15. At any time, on the agreement of the Parties, the procedures under this Article may be modified or substituted by an exchange of notes.

SCHEDULE—continued

PART IV

MISCELLANEOUS PROVISIONS

Article 15

Benefits for the Unemployed

1. This Article applies to any person who is in the territory of a Party and whose right to remain in that territory is dependent upon that person being:
 - (a) in the case of New Zealand, an Australian citizen or a former Australian resident; and
 - (b) in the case of Australia, a New Zealand citizen.
2. Subject to paragraph 3, a person to whom this Agreement applies shall not be eligible to receive benefits for the unemployed from a Party unless the person:
 - (a) has been continuously present in the territory of that Party for not less than 6 months since the date of his or her most recent arrival in that territory; and
 - (b) meets those criteria which are specified for that benefit by the legislation of that Party.
3. This Article shall not apply to a person who has been:
 - (a) in relation to Australia, an Australian resident; or
 - (b) in relation to New Zealand, ordinarily resident in New Zealand, for the period of 12 months immediately before the date on which the person lodges a claim for a benefit for the unemployed in, respectively, Australia or New Zealand.
4. For the purposes of this Article only, benefits for the unemployed means, in relation to Australia:
 - (i) job search allowance;
 - (ii) newstart allowance; and
 - (iii) young homeless allowance; andin relation to New Zealand:
 - (i) unemployment benefit;
 - (ii) job search allowance;
 - (iii) training benefit; and
 - (iv) independent youth allowance.

SCHEDULE—continued

Article 16

Mutual Assistance and Exchange of Information

1. The competent authorities and competent institutions responsible for the application of this Agreement:
 - (a) shall communicate to the other Party, in relation to each benefit granted by that Party and which is reimbursable under Article 11, all the information required to:
 - (i) verify that the person in receipt of that benefit is eligible to receive it under the legislation of the Party granting the benefit;
 - (ii) verify that the person in receipt of that benefit would be eligible for the corresponding benefit if he or she was resident in Australia or ordinarily resident in New Zealand, as the case may be;
 - (iii) verify that the amount of benefit paid is the amount payable;
 - (iv) determine the rate of the corresponding benefit that would be payable if the person in receipt of the benefit were resident in Australia or ordinarily resident in New Zealand as the case may be; and
 - (v) determine the amount of benefit that is reimbursable under Article 11;
 - (b) shall communicate to each other, as soon as possible, all information about the measures taken by them for the application of this Agreement or about changes in their respective legislation in so far as these changes affect the application of this Agreement; and
 - (c) at the request of one to the other, assist each other in relation to the implementation of Agreements on social security entered into by either of the Parties with third states, to the extent and in the circumstances specified in the administrative arrangement made pursuant to Article 17.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any administrative arrangement made pursuant to Article 17.
3. Unless disclosure is required or permitted under the laws of a Party, any information about an individual which is transmitted in accordance with this Agreement to a competent authority or competent institution of that Party by a competent authority or a competent institution of the other Party is confidential and shall be used only for purposes of implementing this Agreement and the social security laws of either Party.

SCHEDULE—continued

4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the competent authority or competent institution of a Party the obligation:
 - (a) to carry out administrative measures at variance with the laws or the administrative practices of that or the other Party; or
 - (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of either Party.
5. Communication between the Parties, including the exchange of information may be conducted by electronic data transfer should the Parties so agree in an exchange of letters at any time.
6. The competent authorities of the Parties shall exchange such information as is necessary for the operation of this Agreement or of the social security laws of the Parties concerning all matters arising under this Agreement, apart from matters relating to maintenance payments or liable parent contributions.

SCHEDULE—continued

Article 17

Administrative Arrangement

The competent authorities of the Parties shall make whatever administrative arrangements are necessary in order to implement this Agreement.

SCHEDULE—continued

Article 18

Recovery of Overpayments

1. Where:
 - (a) an amount paid by one of the Parties to a person in respect of a benefit exceeds the amount if any, that was properly payable, whether by virtue of this Agreement or otherwise, in respect of that benefit; and
 - (b) a benefit is payable by the other Party to that person, whether by virtue of this Agreement or otherwise,
the competent institution of that other Party shall, if requested by the other competent institution to do so, and in accordance with this Article, deduct the amount equivalent to the excess payment referred to in subparagraph (a) from the amount due in respect of the last mentioned benefit.
2. The amount of an excess payment referred to in paragraph 1 shall be the amount determined by the competent institution of the Party by whom the excess payment was made.
3. The rate of deductions made in accordance with paragraph 1 from amounts due in respect of a benefit, and any incidental or related matters, shall be determined by the competent institution of the Party by whom the benefit is payable, in accordance with the legislation or practice of that Party.
4. Amounts deducted by the competent institution of one of the Parties in accordance with paragraph 1, and any amounts received by that competent institution pursuant to arrangements referred to in paragraph 3, shall be remitted to the other competent institution as agreed between the competent institutions or in any administrative arrangement made pursuant to Article 17.
5. For the purposes of this Article, “benefit” shall also include:
in relation to New Zealand:
 - (a) unemployment benefit;
 - (b) sickness benefit;
 - (c) transitional retirement benefit;
 - (d) independent youth benefit;
 - (e) job search allowance;
 - (f) training benefit;
 - (g) domestic purposes benefit for caregivers and women alone;
 - (h) orphans benefit; and

SCHEDULE—continued

- (i) unsupported child's benefit; and
in relation to Australia:
 - (a) job search allowance;
 - (b) newstart allowance;
 - (c) sickness allowance;
 - (d) carer pension;
 - (e) double orphans pension; and
 - (f) family payments.

SCHEDULE—continued

Article 19

Resolution of Difficulties

1. The competent authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.
2. The Parties shall consult promptly at the request of either concerning matters which have not been resolved by the competent authorities in accordance with paragraph 1.

SCHEDULE—continued

Article 20

Review of the Agreement

1. The Parties may agree at any time to review the whole or any part of this Agreement.
2. Subject to paragraph 1, the Parties shall meet for the purpose of reviewing the implementation of this Agreement within 12 months of the Agreement coming into force.
3. Where a Party amends, supplements or replaces its legislation, the Parties shall consult on any consequence of that change to the legislation and on the continuing implementation of the Agreement including on whether any amendment to the Agreement is necessary.
4. Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 months after that request was made and, unless the Parties otherwise agree, their meeting shall be held in the territory of the Party to which that request was made.

SCHEDULE—continued

PART V

FINAL PROVISIONS

Article 21

Transitional Provisions

1. Subject to this Agreement, in determining the eligibility of a person for a benefit payable by virtue of this Agreement, or in determining the reimbursement liability of a Party:
 - (a) a period as an Australian resident and a period during which a person was ordinarily resident in New Zealand; and
 - (b) any event or fact which is relevant to that eligibility,shall be taken into account in so far as those periods or those events are applicable in regard to that person, no matter when they were accumulated or occurred.
2. The start date for payment of a benefit payable by virtue of this Agreement shall be determined in accordance with the legislation of the Party concerned but shall never be earlier than the date on which this Agreement enters into force.
3. If this Agreement does not come into force on 1 January 1995, the Parties shall reimburse each other from 1 January 1995, at the rate provided under Article 12 of this Agreement, but only to the amount provided under Article 13, for all benefits granted before the Agreement comes into force that meet the criteria for reimbursement under Article 12 of this Agreement.
4. Any right to a benefit outside the scope of this Agreement acquired by a person in accordance with the provisions of the Agreement signed at Canberra on 31 October 1988 shall continue.
5. Subject to this Agreement, when this Agreement comes into force, the Agreement between the Government of Australia and the Government of New Zealand providing for Reciprocity in Matters relevant to Social Security signed at Canberra on 31 October 1988 shall terminate and persons who were receiving benefits by virtue of that 1988 Agreement shall receive those benefits by virtue of this Agreement.

SCHEDULE—continued

Article 22

Entry into Force and Termination

1. This Agreement shall come into force on 1 January 1995 if, before that date, the Parties have notified each other by exchange of notes through the diplomatic channel that all requirements that are necessary to give effect to this Agreement in their law have been met. Otherwise it shall come into force on the first day of the second month following the month in which the exchange of notes took place.
2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other a written notice through the diplomatic channel indicating the intention of either Party to terminate 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:
 - (a) at the date of termination, are in receipt of benefits; or
 - (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be eligible to receive, benefits.
4. In the event that this Agreement is terminated in accordance with paragraph 2, the reimbursement provisions of this Agreement shall also continue to apply to all benefits payable at the time of the expiry of the 12 months mentioned in that paragraph.

SCHEDULE—continued

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

DONE in duplicate at Wellington this Nineteenth day of July 1994

Peter Baldwin

Peter Gresham

FOR THE GOVERNMENT
OF AUSTRALIA

FOR THE GOVERNMENT
OF NEW ZEALAND

NOTE

Social Security Act 1991

1. No. 46, 1991, as amended. For previous amendments, see Nos. 68, 69, 70, 73, 74, 115, 116, 141, 175, 194 and 208, 1991; Nos. 12, 69, 81, 94, 118, 133, 134, 138, 228, 229, 230, 233 and 241, 1992; Nos. 25, 36, 61, 120 and 121, 1993; and Nos. 55, 63, 68, 78, 98 and 109, 1994.

