

**AGREEMENT ON SOCIAL SECURITY
BETWEEN
THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF AUSTRALIA**

**THE GOVERNMENT OF CANADA
AND
THE GOVERNMENT OF AUSTRALIA,**

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

Noting the Reciprocal Agreement on Social Security signed on the fourth day of July 1988, as amended by a Protocol signed on the eleventh day of October 1990, and

Acknowledging the need to reflect, by means of a consolidated document, the changes which have taken place in their respective legislation since that Agreement and Protocol were signed,

Have agreed as follows:

PART I - INTERPRETATION AND SCOPE

ARTICLE 1 *Interpretation*

1. In this Agreement:

“**benefit**” means, in relation to a Party, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement that is payable, in addition to that benefit, pension or allowance, to or in respect of a person who qualifies for that additional amount, increase or supplement under the legislation of that Party;

“**Canadian creditable period**” means a period, or the total of two or more periods, of residence or contributions which has been or can be used to acquire the right to a Canadian benefit, but does not include any period considered under paragraph 2 of Article 9 as a Canadian creditable period;

“**carer payment**” means a carer payment payable under the legislation of Australia to the partner of a person in receipt of an Australian pension;

“**competent authority**” means, in relation to Australia, the Secretary to the Department of Family and Community Services and, in relation to Canada, the Minister of Human Resources Development;

“**competent institution**” means, in relation to Australia, the institution responsible for the administration of the legislation of Australia and, in relation to Canada, the competent authority;

“**disability support pension**” means a disability support pension payable under the legislation of Australia to a person who is severely disabled;

“**legislation**” means, in relation to a Party, the laws specified in Article 2 in relation to that Party;

“**partner**” when used in relation to the grant, payment or calculation of rate of an Australian benefit, means partner as defined in the legislation of Australia.

“**period of Australian working life residence**” means, in relation to a person, a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 6 to be a period in which that person was an Australian resident;

“previous agreement” means the *Reciprocal Agreement on Social Security between the Government of Canada and the Government of Australia* signed on the fourth day of July 1988, as amended by a Protocol signed on the eleventh day of October 1990;

“social security laws” means:

- (i) in relation to Australia, the Acts forming the social security law, including regulations made thereunder, as amended; and
- (ii) in relation to Canada, the laws specified in subparagraph 1(b) of Article 2;

“widowed person” means, in relation to Australia, a person who stops being a partnered person because of the death of the person’s partner, but does not include a person who has a new partner.

2. In the application by a Party of this Agreement 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 laws of either Party or, in the event of a conflict of meaning, by whichever of those laws is the more applicable to the circumstances of that person.

ARTICLE 2

Legislative Scope

1. Subject to paragraph 2, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:
 - (a) in relation to Australia, the Acts and regulations forming the social security law to the extent they provide for and apply to:
 - (i) age pensions;
 - (ii) disability support pensions;
 - (iii) carer payments;
 - (iv) pensions payable to widowed persons; and
 - (v) additional child amount payable to persons in receipt of the above benefits; and

- (b) in relation to Canada:
 - (i) the *Old Age Security Act* and the regulations made thereunder; and
 - (ii) the *Canada Pension Plan* and the regulations made thereunder.
- 2. In relation to Australia, the legislation to which this Agreement applies shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security.
- 3. This Agreement shall apply to laws of a Party which extend the existing legislation of that Party to new categories of beneficiaries unless the competent authority of that Party communicates in writing an objection in regard to those laws to the competent authority of the other Party within 60 days of the date on which those laws receive Royal Assent.
- 4. Where, under the legislation of Australia, a new category of beneficiaries has arisen as described in paragraph 3, no qualification for benefits in that category shall exist until the expiration of the period set out in that paragraph.

ARTICLE 3

Personal Scope

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident; or
- (b) is residing or has resided in Canada within the meaning of the *Old Age Security Act* or is making or has made contributions pursuant to the *Canada Pension Plan*

and, where applicable, to any partner, spouse, common-law partner, dependent or survivor of such a person.

ARTICLE 4

Equality of Treatment

Subject to 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.

PART II - PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 5

Residence or Presence in Canada or a Third State

1. Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for a benefit except that he or she is not an Australian resident and in Australia on the date on which he or she lodges a claim for that benefit but he or she:
 - (a) is an Australian resident or residing in Canada or a third State with which Australia has concluded an agreement on social security that includes provision for co-operation in the assessment and determination of claims for benefits; and
 - (b) is in Australia, Canada or that third State

that person shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.

2. Paragraph 1 shall not apply to a claimant for a benefit who has never been an Australian resident.

ARTICLE 6

Totalisation for Australian Benefits

1. Where a person to whom this Agreement applies has claimed an Australian benefit under this Agreement and has accumulated:
 - (a) a period as an Australian resident that is less than the period required to qualify that person, on that ground, for a benefit under the legislation of Australia; and
 - (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 6 for that person,

and has accumulated a Canadian creditable period, then for the purposes of a claim for that Australian benefit, that Canadian creditable period shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia, to be a period in which that person was an Australian resident.

2. In the case of a claim by a person for a disability support pension or pension payable to a widowed person, paragraph 1 shall apply only to a Canadian creditable period accumulated by that person under the *Canada Pension Plan*.
3. For the purposes of a claim by a person for a pension payable to a widowed person, that person shall be deemed to have accumulated a Canadian creditable period for any period for which the person's partner accumulated a creditable period under the *Canada Pension Plan* but any period during which the person and the partner both accumulated Canadian creditable periods under the *Canada Pension Plan* shall be taken into account once only.
4. For the purposes of paragraph 1, where a person:
 - (a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and
 - (b) has accumulated a Canadian creditable period in two or more separate periods that exceed in total the minimum period referred to in subparagraph (a),

the total of the Canadian creditable periods shall be deemed to be one continuous period.

5. For the purposes of this Article:
 - (a) where a period of Australian working life residence and a Canadian creditable period coincide, the period of coincidence shall be taken into account once only as a period in which that person was an Australian resident; and
 - (b) a Canadian creditable period accumulated under the *Old Age Security Act* which coincides with a Canadian creditable period accumulated under the *Canada Pension Plan* shall be taken into account once only.
6. The minimum period to be taken into account for the purposes of subparagraph 1(b) shall be, for a person who is residing outside Australia, a minimum period of Australian working life residence of one year, of which at least 6 months must be continuous and for an Australian resident, no minimum shall apply.

ARTICLE 7
Calculation of Australian Benefits

1. Subject to paragraph 2, where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside Australia, the rate of that benefit shall be determined according to the social security laws of Australia but:
 - (a) disregarding in the calculation of his or her income:
 - (i) the guaranteed income supplement under the *Old Age Security Act*;
 - (ii) the portion of the allowance under that Act equivalent to the guaranteed income supplement; and
 - (iii) other Canadian federal, provincial or territorial welfare payments of a similar character which are income or means tested, as mutually agreed by the competent authorities; and
 - (b) by assessing as income of that person and, where applicable that person's partner, only a proportion of any other benefit received by that person and, where applicable that person's partner, under the legislation of Canada calculated by multiplying the number of whole months, plus one, accumulated by that person in a period of Australian working life residence, but not exceeding 300, by the amount of that benefit and dividing that product by 300.
2. A person referred to in paragraph 1 shall only be entitled to receive the concessional assessment of income described in subparagraph 1(b) for any period during which the rate of that person's Australian benefit is proportionalised under the legislation of Australia.
3. Where an Australian benefit is payable only by virtue of this Agreement to a person who is in Australia, the rate of that benefit shall be determined by:
 - (a) calculating that person's income according to the Australian legislation but disregarding in that calculation any Canadian benefit to which the person or the person's partner is entitled;
 - (b) deducting that Canadian benefit from the maximum rate of that Australian benefit; and

- (c) applying to the remaining benefit obtained under subparagraph (b) the relevant rate calculation set out in the Australian legislation, using as the person's income the amount calculated under subparagraph (a).
4. Where the rate of a benefit calculated in accordance with paragraph 3 is less than the rate of that benefit which would be payable under paragraph 1 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.
 5. For the purposes of paragraph 4, a comparison of the rates of a benefit determined in accordance with paragraphs 1, 2 and 3 shall be made as at:
 - (a) the date of the first pension pay-day occurring after the date on which the claim for the benefit was lodged; and
 - (b) each anniversary of that pension pay-day for so long as the person concerned is entitled to the benefit, using, in that comparison, the number of months in the period of Australian working life residence accumulated by the person at the date as at which the comparison is made.
 6. For the purposes of paragraph 3, where one or the other, or both, of a person and his or her partner are entitled to receive a Canadian benefit, the total of the Canadian benefits payable to that person and his or her partner shall be apportioned equally between them and disregarded in the calculation of their respective incomes, and the amount so apportioned shall be deducted from the amount of Australian benefit that would otherwise be payable to each of them.

ARTICLE 8

Recovery of Debts

1. Where:
 - (a) the competent authority of Canada pays a benefit to a person in respect of a past period;
 - (b) for all or part of that period, the competent institution of Australia has paid to that person a benefit under the legislation of Australia; and
 - (c) the amount of the Australian benefit would have been varied had the Canadian benefit been paid during that period,then

- (d) the amount that would not have been paid by the competent institution of Australia had the Canadian benefit been paid on a periodical basis from the date to which the arrears of benefit referred to in subparagraph (a) were paid shall be a debt due by that person to Australia; and
 - (e) the competent institution of Australia may determine that the amount, or any part, of that debt may be deducted from future payments of a benefit to that person.
2. In paragraph 1, “benefit” means, in relation to Australia, a pension, benefit or allowance that is payable under the social security laws of Australia.

PART III - PROVISIONS RELATING TO CANADIAN BENEFITS

ARTICLE 9

Totalisation for Canadian Benefits

1. Subject to paragraph 3, if a person is not eligible for a benefit on the basis of his or her Canadian creditable periods, eligibility of that person for that benefit shall be determined by totalising these periods and those specified in paragraph 2.
2. (a) For the purposes of determining eligibility for a benefit under the *Old Age Security Act*, a period of Australian working life residence shall be considered as a period of residence in Canada.
- (b) For the purposes of determining eligibility for a benefit under the *Canada Pension Plan*, a calendar year which includes a period of Australian working life residence of at least 6 calendar months shall be considered as a year for which contributions have been made under the *Canada Pension Plan*.
3. For the purposes of this Article, where a Canadian creditable period and a period of Australian working life residence coincide, the period of coincidence shall be taken into account once only as a Canadian creditable period.

ARTICLE 10
Benefits under the Old Age Security Act

1. If a person is eligible for a pension or an allowance solely through the application of the totalising provisions of Article 9, the competent institution of Canada shall calculate the amount of the pension or allowance payable to that person in conformity with the provisions of the *Old Age Security Act* governing the payment of a partial pension or allowance, exclusively on the basis of the periods of residence in Canada which may be considered under that Act.
2. Paragraph 1 shall also apply to a person outside Canada who would be entitled to the payment of a full pension in Canada but who has not resided in Canada for the minimum period required by the *Old Age Security Act* for entitlement to payment of a pension outside Canada.
3. Notwithstanding any other provision of this Agreement:
 - (a) the competent authority of Canada shall not pay a pension under the *Old Age Security Act* to a person outside Canada unless his or her Canadian creditable period accumulated under that Act and period of Australian working life residence, when totalised as provided in Article 9, are at least equal to the minimum period of residence in Canada required by the *Old Age Security Act* for payment of a pension outside Canada; and
 - (b) an allowance and a guaranteed income supplement shall be paid to a person who is outside Canada only to the extent permitted by the *Old Age Security Act*.

ARTICLE 11
Benefits under the Canada Pension Plan

1. If a person is not eligible for a benefit solely on the basis of the periods creditable under the *Canada Pension Plan*, but is eligible for that benefit through the totalising of periods as provided in Article 9, the competent institution of Canada shall calculate the amount of the earnings-related portion of such benefit under the provisions of the *Canada Pension Plan*, exclusively on the basis of the pensionable earnings under the *Canada Pension Plan*.

2. The amount of the flat-rate portion of the benefit payable by virtue of this Agreement shall, in a case referred to in paragraph 1, be determined by multiplying:
 - (a) the amount of the flat-rate portion of the benefit determined under the *Canada Pension Plan*by
 - (b) the fraction which represents the ratio of the periods of contributions to the *Canada Pension Plan* in relation to the minimum qualifying period required under the *Canada Pension Plan* for eligibility for that benefit,but in no case shall that fraction exceed the value of one.

PART IV - MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 12

Lodgement of Documents

1. The date on which a claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Party is lodged with the competent authority or competent institution of the other Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgement of that document with the competent authority or competent institution of the first Party.
2. In relation to Australia, the reference in paragraph 1 to an appeal document is a reference to a document concerning an appeal that may be made to an administrative body established by the social security laws of Australia or made to a body established by other means for the purposes of the social security laws of Australia.

ARTICLE 13

Export of Benefits

1. Unless otherwise provided in this Agreement, the benefits payable to a person under the legislation of one Party shall also be payable to that person when he or she is in the territory of the other Party.

2. Where the legislation of a Party provides that a benefit is payable to a person who is outside the territory of that Party, then that benefit, when payable by virtue of this Agreement, is also payable when that person is outside the territories of both Parties.
3. Where qualification for an Australian benefit is subject to limitations as to time, reference to Australia in those limitations shall be read also as references to Canada.
4. The rights under this Article shall not apply to any rent assistance, pharmaceutical allowance or telephone allowance paid by Australia.
5. A benefit payable by a Party by virtue of this Agreement or under its legislation shall be paid by that Party without deduction of administrative fees and charges by the government or the corresponding competent authority or competent institution for processing and paying that benefit, whether the person qualifying for the benefit is in the territory of the other Party or in a third State.
6. If a person is receiving a carer payment under this Agreement, references to Australia in the provisions relating to qualification and payability of carer payment shall also be read as references to Canada.

ARTICLE 14

Exchange of Information and Mutual Assistance

1. The competent authorities and competent institutions shall:
 - (a) notify each other of laws affecting the application of this Agreement that amend, supplement or replace the social security laws of their respective Parties promptly after the former laws are made;
 - (b) unless prohibited by law, communicate to each other any information necessary for the application of this Agreement or of the respective social security laws of the Parties concerning all matters arising under this Agreement or under those laws;
 - (c) lend their good offices and furnish assistance to one another with regard to the determination or payment of any benefit under this Agreement or any other entitlement under the respective social security laws as if the matter involved the application of their own laws; and

- (d) 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 administrative arrangements made in accordance with Article 15.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the competent authorities and/or competent institutions for the reimbursement of certain types of expenses.
 3. Any information about a person which is transmitted in accordance with this Agreement to a competent authority or competent institution shall be protected in the same manner as information obtained under the social security laws of that Party and shall be disclosed only in the manner permitted by the laws of that Party.
 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 practice 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 administrative practice of that or the other Party.

ARTICLE 15

Administrative Arrangements

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

ARTICLE 16

Language of Communication

In the application of this Agreement, the competent authority or competent institution of a Party may communicate directly with the other competent authority or competent institution in any official language of that Party.

ARTICLE 17
Understandings with a Province of Canada

1. The relevant authority of Australia and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada provided that those understandings are not inconsistent with the provisions of this Agreement.
2. If the relevant authority of Australia and a province of Canada conclude such an understanding, then any references in the legislation of Australia to a scheduled international agreement with a foreign country shall be read also as references to a scheduled instrument of understanding between Australia and a province of Canada.

ARTICLE 18
Resolution of Disputes

1. The competent authorities of the Parties shall resolve, to the extent possible, any disputes 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.
3. Any dispute between the Parties concerning the interpretation of this Agreement which has not been resolved or settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration.
4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators so appointed shall appoint a third who shall act as president; provided that if the two arbitrators fail to agree, the President of the International Court of Justice shall be requested to appoint the president.
5. The arbitrators shall determine their own procedures.
6. The decision of the arbitrators shall be final and binding.

ARTICLE 19
Review of Agreement

Where a Party requests the other to meet to review this Agreement, representatives of the Parties shall meet no later than 6 months after that request was made and, unless the Parties otherwise mutually determine, their meeting shall be held in the territory of the Party to which that request was made.

PART V - FINAL PROVISIONS

ARTICLE 20
Transitional provisions

1. Subject to this Agreement, in determining the eligibility of a person for a benefit payable by virtue of this Agreement:
 - (a) a period as an Australian resident and/or a Canadian creditable period; and
 - (b) any event or fact which is relevant to that eligibilityshall 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. Subject to paragraphs 4 and 6, 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. Subject to this Agreement, when this Agreement comes into force, the previous agreement shall terminate and persons who were receiving benefits by virtue of that agreement shall receive those benefits by virtue of this Agreement.
4. When a person, due to the operation of paragraph 3 of this Article, receives a carer payment in Australia by virtue of this Agreement, the rate of that carer payment shall be determined according to the legislation of Australia.

5. Where, on the date on which this Agreement enters into force, a person:
- (a) is in receipt of a benefit under the legislation of either Party by virtue of the previous agreement; or
 - (b) is qualified to receive a benefit referred to in subparagraph (a) and, where a claim for that benefit is required, has claimed that benefit,

no provision of this Agreement shall affect that person's qualification to receive that benefit.

6. An Australian benefit that is payable only by virtue of the previous agreement to a person who:

- (a) was an Australian resident on 8 May 1985; and
- (b) commenced to receive that benefit before 1 January 1996

shall be paid, during any absence of that person from Australia that commenced before 1 January 1996, at a rate calculated in accordance with paragraphs 3 and 4 of Article 7 of this Agreement.

7. Where, after the entry into force of this Agreement, a person:

- (a) applies for a benefit under the legislation of Canada; and
- (b) would have been eligible for that benefit under the provisions of the previous agreement, with a commencement date determined in accordance with the legislation of Canada which is prior to the date of entry into force of this Agreement,

the competent institution of Canada shall pay that benefit to that person with effect from that commencement date. This shall also be the case in regard to an application for a benefit which is received prior to the entry into force of this Agreement but on which the competent institution of Canada has not yet taken a decision when this Agreement enters into force.

8. A death benefit under the *Canada Pension Plan* shall not be paid by virtue of this Agreement in respect of a death which occurred before the date of entry into force of the previous agreement.

ARTICLE 21
Period of Duration and Termination

1. Subject to paragraph 2, this Agreement shall remain in force until 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 the other Party to terminate this Agreement.
2. In the event that this Agreement is terminated in accordance with paragraph 1, 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 that paragraph, have lodged claims for, and would be entitled to receive, benefits.

ARTICLE 22
Entry into Force

This Agreement shall enter into force on a date specified in notes exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Agreement have been finalised.

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

DONE *in two copies at Ottawa, this 26th day of July 2001, in the English and French languages, each text being equally authoritative.*

FOR THE GOVERNMENT OF CANADA
Paul Migus

FOR THE GOVERNMENT OF AUSTRALIA
Frances Lisson