



**THE SOCIAL WELFARE (RECIPROCITY WITH AUSTRALIA)
AMENDMENT ORDER 1995**

ELIZABETH R.

ORDER IN COUNCIL

At the Court at Wellington this 3rd day of November 1995

Present:

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL

PURSUANT to section 19 of the Social Welfare (Transitional Provisions) Act 1990 and to section 3 of the Constitution Act 1986, Her Majesty the Queen, acting by and with the advice and consent of the Executive Council, is pleased to make the following order.

ORDER

1. Title and commencement—(1) This order may be cited as the Social Welfare (Reciprocity with Australia) Amendment Order 1995.

(2) Clauses 2 and 3 of this order shall be deemed to have come into force on the 1st day of January 1995.

(3) Clause 4 of this order shall be deemed to have come into force on the 1st day of July 1995.

(4) Clause 5 of this order shall come into force on a date to be specified by the Governor-General by Order in Council.

2. Interpretation—In this order, unless the context otherwise requires,—

“Agreement” means the agreement on social security between the Government of New Zealand and the Government of Australia

signed on the 19th day of July 1994 and given effect, so far as it relates to New Zealand, by the Reciprocity Order:

“First Protocol” means the Protocol between the Government of New Zealand and the Government of Australia amending and supplementing the agreement and signed on the 7th day of September 1995, as set out in the First Schedule to this order:

“Reciprocity Order” means the Social Welfare (Reciprocity with Australia) Order 1994 (S.R. 1994/264):

“Second Protocol” means the Second Protocol between the Government of New Zealand and the Government of Australia amending and supplementing the agreement and signed on the 7th day of September 1995, as set out in the Second Schedule to this order.

3. Adoption of First Protocol and modification of Acts—(1) The provisions of the First Protocol (other than Article III) shall have force and effect so far as they relate to New Zealand.

(2) The provisions of—

(a) The Social Welfare (Transitional Provisions) Act 1990; and

(b) The Social Security Act 1964; and

(c) The regulations and orders in force under those Acts and, in particular, the Reciprocity Order—

shall have effect subject to such modifications as may be required for the purpose of giving effect to the First Protocol (other than Article III).

4. Adoption of Article III of First Protocol and modification of Acts—(1) The provisions of Article III of the First Protocol shall have force and effect so far as they relate to New Zealand.

(2) The provisions of—

(a) The Social Welfare (Transitional Provisions) Act 1990; and

(b) The Social Security Act 1964; and

(c) The regulations and orders in force under those Acts and, in particular, the Reciprocity Order—

shall have effect subject to such modifications as may be required for the purpose of giving effect to Article III of the First Protocol.

5. Adoption of Second Protocol and modification of Acts—(1) The provisions of the Second Protocol shall have force and effect so far as they relate to New Zealand.

(2) The provisions of—

(a) The Social Welfare (Transitional Provisions) Act 1990; and

(b) The Social Security Act 1964; and

(c) The regulations and orders in force under those Acts and, in particular, the Reciprocity Order—

shall have effect subject to such modifications as may be required for the purpose of giving effect to the Second Protocol.

SCHEDULES

Clauses 2, 3, 4

FIRST SCHEDULE

FIRST PROTOCOL TO THE AGREEMENT
BETWEEN
THE GOVERNMENT OF NEW ZEALAND
AND
THE GOVERNMENT OF AUSTRALIA
ON SOCIAL SECURITYTHE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT
OF AUSTRALIA

WISHING to amend and supplement the Agreement on Social Security between the two States signed at Wellington on the nineteenth day of July 1994, have agreed as follows:

Article I

1. In this Protocol "Agreement" means the Agreement between the Government of New Zealand and the Government of Australia on Social Security signed on the nineteenth day of July 1994 at Wellington.
2. In the application of this Protocol (the first Protocol to the Agreement) any term defined in the Agreement shall, unless the context otherwise requires, have the same meaning.
3. In the application of this Protocol any term not defined in the Agreement or this Protocol shall, unless the context otherwise requires, have the meaning assigned to it by the legislation of either Party.

Article II

Subparagraph (j) of paragraph 1 of Article 1 of the Agreement shall be deleted and substituted by the following:

- "(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 (2) (b) of the Agreement between the Government of Australia and the Government of New Zealand providing for reciprocity in matters relating to Social Security signed at Canberra on 31 October 1988 or relies on Article 7 (2) (b) (ii) or (iii) of the Agreement to be eligible for a New Zealand benefit."

Article III

Subparagraph (a) of paragraph 1 of Article 2 of the Agreement shall be deleted and substituted by the following:

- "(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;

SCHEDULES—*continued*FIRST SCHEDULE—*continued*

- (iv) sole parent pension;
- (v) wife pension;
- (vi) partner allowance payable to the female partner of a person in receipt of an age pension or a disability support pension (referred to in this Agreement as partner allowance);
- (vii) parenting allowance payable to the female partner of a person in receipt of an age pension or a disability support pension (referred to in this Agreement as parenting allowance); and
- (viii) additional family payment payable to persons in receipt of the above benefits; and”

Article IV

In order to clarify the original intentions of the Parties when first drafting Article 3 of the Agreement, paragraph 1 of Article 3 of the Agreement shall be deleted and substituted by the following:

- “1. This Agreement shall apply to any person who:
- (a) is or has been an Australian resident; or
 - (b) is or has been ordinarily resident in the territory of New Zealand; and
- to any other person who derives rights to a benefit from a person who is eligible for a benefit under this Agreement.”

Article V

Subparagraph (b) of paragraph 1 of Article 12 of the Agreement shall be deleted and substituted by the following:

- “(b) by multiplying the nominal benefit rate (as calculated below) by the smaller of:
- (i) the result obtained under subparagraph (a); or
 - (ii) one.”

Article VI

Paragraph 3 of Article 14 of the Agreement shall be deleted and substituted by the following:

- “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 or, if those dates are not banking days, on the first banking day thereafter.”

Article VII

Paragraph 4 of Article 15 of the Agreement shall be deleted and substituted by the following:

- “4. For the purposes of this Article only, benefits for the unemployed means, in relation to Australia:
- (i) job search allowance; and
 - (ii) newstart allowance; and
- in relation to New Zealand:

SCHEDULES—*continued*FIRST SCHEDULE—*continued*

- (i) unemployment benefit;
- (ii) job search allowance;
- (iii) training benefit; and
- (iv) independent youth allowance.”

Article VIII

Upon an exchange of notes by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Protocol have been finalised, this Protocol shall be deemed to have entered into force on 1 January 1995, except for Article III which shall be deemed to have entered into force on 1 July 1995.

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

DONE in duplicate at Sydney this seventh day of September 1995.

FOR THE GOVERNMENT OF
NEW ZEALAND

FOR THE GOVERNMENT OF
AUSTRALIA

Graham Fortune

P. Baldwin

SCHEDULES—*continued*

SECOND SCHEDULE

Clauses 2, 5

SECOND PROTOCOL TO THE AGREEMENT
BETWEEN
THE GOVERNMENT OF NEW ZEALAND
AND
THE GOVERNMENT OF AUSTRALIA
ON SOCIAL SECURITYTHE GOVERNMENT OF NEW ZEALAND AND THE GOVERNMENT
OF AUSTRALIA

WISHING to amend and supplement the Agreement on Social Security between the two States signed at Wellington on the nineteenth day of July 1994, have agreed as follows:

Article I

1. In this Protocol "Agreement" means the Agreement between the Government of New Zealand and the Government of Australia on Social Security signed on the nineteenth day of July 1994 at Wellington as amended by the first Protocol signed on the seventh day of September 1995 at Sydney.
2. In the application of this Protocol (the second Protocol to the Agreement) any term defined in the Agreement shall, unless the context otherwise requires, have the same meaning.
3. In the application of this Protocol any term not defined in the Agreement or this Protocol shall, unless the context otherwise requires, have the meaning assigned to it by the legislation of either Party.

Article II

1. The heading to Article 7 of the Agreement shall be amended to read "Eligibility for New Zealand Benefits".
2. Paragraphs 4 and 5 of Article 7 of the Agreement shall be deleted and the remaining paragraph shall be renumbered as paragraph 4.

Article III

1. The heading to Article 8 of the Agreement shall be amended to read "Eligibility for Australian Benefits".
2. Paragraphs 4 and 5 of Article 8 of the Agreement shall be deleted and the remaining paragraphs shall be renumbered as paragraphs 4, 5 and 6.

Article IV

A new Article shall be inserted after Article 8 of the Agreement, to read as follows:

"Article 8A

Portability of Benefits

New Zealand benefits

1. Except as provided in paragraphs 2 and 3, the temporary absence provisions under the legislation of New Zealand shall apply to a person who is receiving a New Zealand benefit under this Agreement.

SCHEDULES—*continued*SECOND SCHEDULE—*continued*

2. A person who is in receipt of New Zealand Superannuation and who is present in Australia but not an Australian resident, shall be eligible to continue to receive that benefit for up to 26 weeks:
- (a) where that person is temporarily absent from New Zealand for up to 26 weeks; or
 - (b) where that person is temporarily absent from New Zealand for over 26 weeks and in the opinion of the New Zealand Competent Authority that person has sufficient reason for remaining outside New Zealand for more than 26 weeks.
3. A person who is in receipt of an invalid's benefit, a widow's benefit or a domestic purposes benefit and who is present in Australia but not an Australian resident, shall be eligible to continue to receive that benefit for up to 4 weeks during a temporary absence from New Zealand.

Australian benefits in New Zealand

4. A person who, by virtue of this Agreement or otherwise, is in receipt of an age pension and who is present but not ordinarily resident in New Zealand, shall be eligible to continue to receive that benefit for up to 26 weeks during a temporary absence from Australia.
5. A person who, by virtue of this Agreement or otherwise, is in receipt of a disability support pension, a wife pension, a widow B pension or a sole parent pension and who is present but not ordinarily resident in New Zealand, shall be eligible to continue to receive that benefit for up to 4 weeks during a temporary absence from Australia.
6. A person who, by virtue of this Agreement or otherwise, is in receipt of a partner or parenting allowance and who is present but not ordinarily resident in New Zealand, shall be eligible to continue to receive that benefit during a temporary absence from Australia for the period allowed under the legislation of Australia, except where the partner of that person is in receipt of a disability support pension in which case the person shall be eligible to receive his or her benefit for up to 4 weeks during a temporary absence from Australia.

Australian benefits in a Third Country

7. A person who, by virtue of this Agreement, is in receipt of an age pension and who is not present or ordinarily resident in New Zealand shall be eligible to continue to receive that benefit for up to 26 weeks during a temporary absence from Australia.
8. A person who, by virtue of this Agreement, is in receipt of a disability support pension, a wife pension, a widow B pension, or a sole parent pension who is not present or ordinarily resident in New Zealand shall be eligible to continue to receive that benefit for up to 4 weeks during a temporary absence from Australia.
9. A person who, by virtue of this Agreement, is in receipt of a partner or parenting allowance who is not present or ordinarily resident in New Zealand shall be eligible to continue to receive that benefit during a temporary absence from Australia for the period allowed under the legislation of Australia, except where the partner of that person is in receipt of a disability support pension in which case the person shall be

SCHEDULES—*continued*SECOND SCHEDULE—*continued*

eligible to receive his or her benefit for up to 4 weeks during a temporary absence from Australia.

Dual Payments

10. A person who is in New Zealand shall not be eligible for any pension, benefit or allowance paid under the social security laws of Australia where that person would otherwise be eligible for a New Zealand benefit under this Agreement or any payment (other than an emergency benefit, a special benefit or a benefit payable in respect of specified costs) under the social security laws of New Zealand.

11. A person who is in Australia shall not be eligible for any payment made under the social security laws of New Zealand where that person is eligible for an Australian benefit under this Agreement or any payment made under the social security laws of Australia.

Article V

1. Subparagraph (e) of paragraph 1 of Article 11 of the Agreement shall be deleted and substituted by the following:

“(e) is an Australian resident or is in receipt of a benefit by virtue of Article 8 or Article 8A; and”

2. Subparagraph (e) of paragraph 2 of Article 11 of the Agreement shall be deleted and substituted by the following:

“(e) is ordinarily resident in New Zealand or is in receipt of a benefit by virtue of Article 7 or Article 8A; and”

3. Paragraph 5 of Article 11 of the Agreement shall be deleted and substituted by the following:

“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 except:

- (a) during a period of absence as provided in Article 8A; and
- (b) in the case of a benefit which is not paid by virtue of this Agreement and is not paid into the territory of either Party, for a period up to:
 - (i) 26 weeks for age pension and New Zealand superannuation;
 - (ii) 13 weeks for partner and parenting allowance payable to the partner of a person in receipt of an age pension; and
 - (iii) 4 weeks for all other benefits.”

Article VI

This Protocol shall enter into force on the first day of the month following the month in which notes are exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Protocol have been finalised.

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

DONE in duplicate at Sydney this seventh day of September 1995.

SCHEDULES—*continued*SECOND SCHEDULE—*continued*FOR THE GOVERNMENT OF
NEW ZEALANDFOR THE GOVERNMENT OF
AUSTRALIA

Graham Fortune

P. Baldwin

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the order, but is intended to indicate its general effect.

This order gives effect to the First and Second Protocols to the Agreement between the Governments of New Zealand and Australia on Social Security. The First Protocol is set out in the First Schedule to the Order. The Second Protocol is set out in the Second Schedule to the Order.

The First Protocol is deemed to have come into force on 1 January 1995, except for Article III which is deemed to have come into force on 1 July 1995.

The Second Protocol is to come into force on the first day of the month following the month in which notes are exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to this Protocol have been finalised.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 6 November 1995.
This order is administered in the Department of Social Welfare.