



**THE SOCIAL WELFARE (RECIPROCITY WITH AUSTRALIA)
ORDER 1990**

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 9th day of April 1990

Present:

THE RIGHT HON. G. W. R. PALMER PRESIDING IN COUNCIL

PURSUANT to section 19 of the Social Welfare (Transitional Provisions) Act 1990, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following order.

ORDER

1. Title and commencement—(1) This order may be cited as the Social Welfare (Reciprocity with Australia) Order 1990.

(2) This order shall be deemed to have come into force on the 1st day of April 1990.

2. Adoption of agreement and modification of Acts—(1) The provisions contained in the agreement set out in the Schedule to this order shall have force and effect so far as they relate to New Zealand.

(2) The provisions of the Social Welfare (Transitional Provisions) Act 1990 and of the Social Security Act 1964 and of the regulations and orders in force under those Acts shall have effect subject to such modifications as may be required for the purpose of giving effect to the said agreement.

Clause 2

SCHEDULE

AGREEMENT

BETWEEN THE GOVERNMENT OF NEW ZEALAND
AND THE GOVERNMENT OF AUSTRALIA
PROVIDING FOR RECIPROCITY IN MATTERS
RELATING TO SOCIAL SECURITY

The Government of New Zealand and

The Government of Australia,

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 reciprocity in matters relating to social security which they entered into on the Fifth day of October 1986 by means of a consolidated document,

HAVE agreed as follows:

PART I—INTERPRETATION AND SCOPE

ARTICLE 1

Interpretation

1. In this Agreement, unless the context otherwise requires:

- (a) “Australian benefit” means a benefit referred to in Article 2 in relation to Australia;
- (b) “benefit” means Australian benefit or New Zealand benefit;
- (c) “competent authority” means, in the case of Australia, the Secretary to the Department of Social Security or an authorised representative of the Secretary and, in the case of New Zealand, the Director-General of Social Welfare or an authorised representative of the Director-General or, if either no longer exists, such other officer or body as the responsible Minister for the Party concerned notifies to the responsible Minister for the other Party;
- (d) “New Zealand benefit” means a benefit referred to in Article 2 in relation to New Zealand; and
- (e) “social security laws” means in relation to a Party, the laws specified in Article 2 in relation to that Party.

2. This Agreement applies:

- (a) in relation to Australia, to its external territories in the same manner as the social security laws of Australia apply to those territories; and
 - (b) in relation to New Zealand, to New Zealand only and not to the Cook Islands, Niue or Tokelau,
- and references to “Australia”, “New Zealand” or “territory” in relation to either of them shall be read accordingly.

3. In the application by a Party of this Agreement in relation 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

SCHEDULE—*continued*

either Party or, in the event of a conflict of meanings, by whichever of those laws is the more applicable to the circumstances of that person.

ARTICLE 2

Legislative Scope

1. The legislation within the scope of this Agreement is:

(a) in relation to Australia: the Social Security Act 1947 as amended at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that Act, in so far as that Act and that legislation provide for, apply to or affect the following benefits:

- (i) age pensions;
- (ii) invalid pensions;
- (iii) wives' pensions;
- (iv) carers' pensions;
- (v) widows' pensions;
- (vi) supporting parents' benefits;
- (vii) unemployment benefits;
- (viii) sickness benefits; and
- (ix) family allowances; and

(b) in relation to New Zealand: the Social Security Act 1964 as amended at the date of signature of this Agreement and any legislation that subsequently amends, supplements or replaces that Act, in so far as that Act and that legislation provide for, apply to or affect the following benefits:

- (i) national superannuation;
- (ii) invalids' benefits;
- (iii) widows' benefits;
- (iv) domestic purposes benefits;
- (v) unemployment benefits;
- (vi) sickness benefits;
- (vii) orphans' benefits; and
- (viii) family benefits.

2. Notwithstanding the provisions of paragraph 1, the legislation within the scope of this Agreement 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 bilateral agreement on social security entered into by either Party.

3. The competent authorities of the Parties shall notify each other of legislation that amends, supplements or replaces the legislation within the scope of this Agreement in relation to their respective Parties, promptly after the first-mentioned legislation is enacted.

ARTICLE 3

Equality of Treatment

A Party shall treat all persons affected by this Agreement equally in regard to rights and obligations that arise by virtue of this Agreement.

SCHEDULE—*continued*

PART II—RESIDENCE

ARTICLE 4

Entitlement to Benefits During Residence or Presence in a Country

1. For the purposes of this Agreement and of the Social Security laws of Australia, where a person who is ordinarily resident in New Zealand has travelled directly from New Zealand to Australia and:

- (a) has been in Australia for a continuous period of at least 26 weeks immediately prior to lodging a claim for an Australian benefit; or
- (b) has a bona fide intention to remain in Australia for more than 26 weeks,

he or she shall be deemed to be an Australian resident.

2. For the purposes of this Agreement and of the Social Security laws of New Zealand, where an Australian resident has travelled directly from Australia to New Zealand and:

- (a) has been in New Zealand for a continuous period of at least 26 weeks immediately prior to lodging a claim for a New Zealand benefit;
or
- (b) has a bona fide intention to remain in New Zealand for more than 26 weeks,

he or she shall be deemed to be ordinarily resident in New Zealand.

ARTICLE 5

Recognition of Periods of Residence in New Zealand and Periods as an Australian Resident

1. Where a person is an Australian resident and is claiming an Australian benefit each period in which that person was resident in New Zealand shall be deemed, only for the purposes of meeting any minimum qualifying periods for that claim, to be a period as an Australian resident.

2. Where a person is residing in New Zealand and is claiming a New Zealand benefit each period in which that person was an Australian resident or, as appropriate, in which a related person was an Australian resident shall be deemed, only for the purposes of meeting any minimum qualifying periods for that claim, to be a period of residence in New Zealand.

3. In paragraphs 1 and 2 “benefit” does not include unemployment benefit.

4. In paragraph 2 “related person” means:

- (a) the spouse of the claimant;
- (b) the last deceased spouse;
- (c) a child in respect of whom the benefit referred to in paragraph 2 is claimed; or
- (d) the last surviving parent, or the deceased parent formerly responsible for the care and control, of a child,

as the circumstances require.

5. Subject to paragraph 6, the question as to whether a person is or, at any past time, was an Australian resident or residing in New Zealand for the purposes of this Agreement shall be determined by reference to the domestic laws of the relevant Party.

SCHEDULE—*continued*

6. Where, for a period, a person is both an Australian resident and a resident of New Zealand, that period shall be counted:

- (a) in relation to a claim for an Australian benefit, only as a period as an Australian resident; and
- (b) in relation to a claim for a New Zealand benefit, only as a period of residence in New Zealand.

7. In relation to a claim by a person under this Agreement for national superannuation any periods in which that person was an Australian resident and was present in Australia shall, for the purposes of that claim, be deemed to be periods in which that person was resident and present in New Zealand.

PART III—PROVISIONS RELATING TO BENEFITS

ARTICLE 6

Payment of Supplementary and Additional Amounts

Where a benefit is payable by a Party by virtue of this Agreement to or in respect of a person, there shall also be payable any supplement or additional amount that is payable, in addition to that benefit, to or in respect of a person who qualifies for that supplement or additional amount under the social security laws of that Party.

ARTICLE 7

Entitlement to Payment by New Zealand of National Superannuation

A person shall not be entitled by virtue of this Agreement to the payment by New Zealand of national superannuation unless that person is of an age at which an age pension may be payable to the person under the social security laws of Australia.

ARTICLE 8

New Zealand Widows', Domestic Purposes and Orphans' Benefits

Where a widow's benefit, a domestic purposes benefit or an orphan's benefit would be payable by New Zealand but for the fact that a child to whom that benefit would relate was born in Australia, that child shall, for the purposes of a claim for that benefit, be deemed to have been born in New Zealand.

ARTICLE 9

Unemployment Benefit

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 on that person being a citizen of the other Party.

2. Subject to paragraph 4, a person to whom this Article applies shall not be qualified to receive unemployment benefit 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;

SCHEDULE—*continued*

- (b) satisfies the competent authority of that Party, by reference to the person's circumstances, or his or her work history in that territory, that the person has permanently settled in that territory; and
 - (c) meets those criteria which are specified for that benefit by the social security laws of that Party.
3. For the purposes of subparagraph 2 (b):
- (a) a person shall be deemed to satisfy the requirements in relation to work history in the territory of a Party if, since the date referred to in subparagraph 2 (a), the person has undertaken paid work for 8 weeks of at least 30 hours per week; and
 - (b) consideration of a person's circumstances shall include consideration of:
 - (i) the person's family arrangements;
 - (ii) the housing or accommodation arrangements of the person and, if applicable, of the spouse and children of the person, whether in the territory of the Party concerned, of the other Party or elsewhere, including actions such as the purchase or lease of a home in the first-mentioned territory and the disposal of a former home in the other territory or elsewhere; and
 - (iii) the arrangements made by the person in regard to any bank or comparable accounts, the transfer, disposal or location of any property, and taxation clearances.
4. 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, resident in New Zealand,
- for the period of 12 months immediately preceding the date on which the person lodges a claim for unemployment benefit in, respectively, Australia or New Zealand.
5. For the purposes of paragraph 4, a period as an Australian resident or of residence in New Zealand in relation to a person shall include any period or periods of temporary absence by that person that do not exceed in the aggregate 2 calendar months, and that do not break the continuity of that period as an Australian resident or of residence in New Zealand.

ARTICLE 10

Supporting Parents' Benefits and Domestic Purposes Benefits

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 on that person being a citizen of the other Party.
2. Subject to paragraph 3, a person to whom this Article applies shall not be granted a supporting parents' benefit or a domestic purposes benefit by a Party unless, in addition to meeting the requirements for that benefit of the social security laws of that Party, the person 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.
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, resident in New Zealand,

SCHEDULE—*continued*

for the period of 12 months immediately preceding the date on which the person lodges a claim, in Australia, for supporting parents' benefit or, in New Zealand, for domestic purposes benefit.

4. For the purposes of paragraph 3, a period as an Australian resident or of residence in New Zealand in relation to a person:

- (a) shall include any period or periods of temporary absence by that person that do not exceed in the aggregate 2 calendar months, and that do not break the continuity of that period as an Australian resident or of residence in New Zealand; and
- (b) shall not include any period deemed by Article 5 to be a period as an Australian resident or a period of residence in New Zealand.

ARTICLE 11

Wife's Pension and Carer's Pension

A person who receives from Australia a wife's pension or a carer's pension by virtue of the fact that the spouse of that person receives, by virtue of this Agreement, an Australian benefit shall, for the purposes of this Agreement, be deemed to receive that pension by virtue of this Agreement.

ARTICLE 12

Sickness Benefit

1. This Article applies to a person who, immediately before leaving New Zealand, was receiving a New Zealand sickness benefit or an analogous emergency benefit payable under the Social Security Act 1964 of New Zealand.

2. Where a person to whom this Article applies:

- (a) has moved directly from New Zealand to Australia, without passing through a third country;
- (b) has remained incapacitated for work since arrival in Australia; and
- (c) claims an Australian sickness benefit within 4 weeks of that arrival, that person shall be deemed for the purposes of that claim to have suffered a loss of income by reason of that incapacity amounting to the maximum rate of Australian sickness benefit applicable to that person.

3. A person who qualifies for an Australian sickness benefit under paragraph 2 shall, subject to the social security laws of Australia, be paid that benefit from the date of that person's arrival in Australia.

PART IV—REIMBURSEMENT PROVISIONS

ARTICLE 13

Reimbursement of Certain Australian Benefits

1. Where by virtue of this Agreement or otherwise a person receives from Australia:

- (a) an age pension;
- (b) an invalid pension;
- (c) a widow's pension;
- (d) a wife's pension;

SCHEDULE—*continued*

(e) a rehabilitation allowance under Part XVI of the Social Security Act 1947 of Australia which is paid in lieu of an invalid pension or a widow's pension; or

(f) an allowance granted under Part XIV of the Social Security Act 1947 of Australia,

and, when that person left New Zealand, had lodged a claim for and would have been entitled to receive, or was receiving,

(g) national superannuation;

(h) an invalid's benefit; or

(i) a widow's benefit,

otherwise than by virtue of the Agreement, then New Zealand will reimburse Australia the full cost of the Australian benefit subject to paragraphs 3 and 4.

2. A supplement or additional amount payable by Australia in addition to a benefit referred to in subparagraphs 1 (a) to 1 (f) inclusive shall for the purposes of paragraph 1 be deemed to be part of that benefit.

3. The Australian benefits described in subparagraphs 1 (a) to 1 (f) inclusive which are subject to reimbursement by New Zealand shall be those granted by Australia to persons who leave New Zealand on or after the First day of April 1989.

4. New Zealand shall not be required to reimburse Australia for payment of the benefits listed in subparagraphs 1 (a) to 1 (f) inclusive after a recipient has left Australia permanently or has been absent from Australia for more than 26 weeks unless and until that recipient returns to Australia when the obligation to reimburse shall revive.

5. At least 2 months before the start of any New Zealand financial year while this Agreement is in effect the competent authority for Australia will supply to the competent authority for New Zealand a written estimate of the amount of the reimbursable benefits Australia expects to pay in that financial year.

6. Within 3 months from the start of a New Zealand financial year referred to in paragraph 5, New Zealand shall pay to Australia the amount of the estimate given under paragraph 5 for that financial year.

7. Within 3 months from the end of a New Zealand financial year referred to in paragraph 5 the competent authority for Australia shall provide to the competent authority for New Zealand a written reconciliation statement covering the amounts of reimbursable benefits estimated and actually paid for and in that financial year.

8. If the reconciliation statement described in paragraph 7 shows that an amount of money should be paid by one Party to the other to balance the payments in the relevant New Zealand financial year then that amount shall be paid within 3 months from receipt of that statement.

PART V—MISCELLANEOUS PROVISIONS

ARTICLE 14

Payment of Benefits During Temporary Absences

1. Subject to the provisions of this Agreement, where Australia pays:
 - (a) an age pension;

SCHEDULE—*continued*

- (b) an invalid pension;
- (c) a wife's pension;
- (d) a widow's pension;
- (e) an allowance granted under Part XIV of the Social Security Act of Australia;
- (f) a rehabilitation allowance under Part XVI of the Social Security Act 1947 of Australia which is paid in lieu of an invalid pension or a widow's pension; or
- (g) a family allowance,

by virtue of this Agreement, that benefit (apart from any rent assistance) shall not, for a period of up to 26 weeks, cease to be payable by reason only of a temporary absence from Australia.

2. Subject to the provisions of this Agreement, where New Zealand pays:

- (a) national superannuation;
- (b) an invalid's benefit;
- (c) a widow's benefit;
- (d) an orphan's benefit; or
- (e) a family benefit,

by virtue of this Agreement, that benefit shall not, for a period of up to 26 weeks, cease to be payable by reason only of a temporary absence from New Zealand.

3. A carer's pension (apart from any rent assistance) payable by virtue of this Agreement or otherwise shall not, for a period of up to 26 weeks, cease to be payable by reason only of a temporary absence of the beneficiary from Australia in New Zealand.

4. Where a person who resides in Australia left New Zealand with a bona fide intention to remain outside New Zealand for a period of 26 weeks or less and continued to receive from New Zealand national superannuation, an invalid's benefit, a widow's benefit, an orphan's benefit or a family benefit after that person's departure from New Zealand, subsequently decides to remain in Australia for longer than 26 weeks, the competent authority for New Zealand shall not establish an overpayment of such a benefit by reason of that person's departure from New Zealand.

ARTICLE 15

Exclusion of New Zealand Benefits from Australian Income Test

Where a benefit is paid by Australia to a person who is in New Zealand and a benefit is also paid by New Zealand to that person, the amount of the benefit paid by New Zealand shall not be included in the income of that person for the purposes of the social security laws of Australia.

ARTICLE 16

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 is properly payable, whether by virtue of this Agreement or otherwise, in respect of that benefit; and

SCHEDULE—*continued*

- (b) a benefit is payable by the other Party to that person, whether by virtue of this Agreement or otherwise, the competent authority of that other Party shall, if requested by the other competent authority to do so, and in accordance with this Article, deduct the amount equivalent to the excess payment referred to in subparagraph (a) from amounts 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 authority 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 authority of the Party by whom that benefit is payable, in accordance with the social security laws of that Party.
4. In cases where excess payments cannot be recovered by deductions from other benefits under paragraph 1, a competent authority, if requested by the other competent authority, shall assist the latter in endeavouring to arrange for repayment by the recipient of those excess payments.
5. Amounts deducted by one of the Parties in accordance with paragraph 1, and any amounts received by that Party pursuant to arrangements referred to in paragraph 4, shall be remitted to the other Party as agreed between the competent authorities or in administrative arrangements made pursuant to Article 17.
6. In this Article, “benefit” is not limited to those benefits specified in Article 2.

ARTICLE 17

Administrative Arrangements

1. The competent authorities of the Parties shall make whatever administrative arrangements are necessary from time to time in order to implement this Agreement, and to enable benefits payable by one of the Parties, whether by virtue of this Agreement or otherwise, to persons who are residing in, or who are in, the territory of the other Party to be paid to those persons on behalf of the first-mentioned Party by that other Party.
2. Where arrangements of the kind referred to in paragraph 1 are required to be made on a mutual basis, the competent authorities shall co-operate both in regard to matters affecting the operation of both social security systems and of each of them.
3. A benefit payable by one of the Parties by virtue of this Agreement shall be paid by that Party without deduction for administrative fees and charges.

ARTICLE 18

Exchange of Information

1. 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 or under those laws other than those matters referred to in the

SCHEDULE—*continued*

social security laws of New Zealand as “Contributions Towards Cost of Domestic Purposes Benefits for Solo Parents” and “Medical and Hospital Benefits and other Related Benefits”.

2. Any information received by the competent authority of a Party pursuant to paragraph 1 shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with matters, including the determination of appeals, arising under the provisions of this Agreement or the social security laws of the Parties and shall be used for other purposes or disclosed to other persons only with the prior consent of the competent authority who provided the information.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on the competent authority 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 administration of that or of the other Party.

4. A Party shall not raise any charges against the other Party for services of an administrative nature rendered by that first-mentioned Party to the other in accordance with this Agreement or the administrative arrangements made pursuant to Article 17, but that other Party shall meet any costs or expenses which are reasonably incurred for those services and are payable to another person or organisation.

ARTICLE 19

Reviews and Appeals

Any person who is affected by a decision of the competent authority of a Party in relation to a matter arising by virtue of this Agreement shall have the same rights to review by, or appeal to, administrative and judicial bodies of that Party as are provided under the domestic laws of that Party.

ARTICLE 20

Review of Agreement

The Parties may agree at any time to review any of the provisions of this Agreement and, in any case, shall, within the period of 2 years commencing on the date on which this Agreement comes into effect, review the present limitation on continuation of payment by a Party of benefits to persons who move outside the territory of that Party.

PART VI—FINAL PROVISIONS

ARTICLE 21

Entry into Force

1. This Agreement shall enter into force on the date on which the Parties exchange notes through the diplomatic channel notifying each other that the last of such things has been done as is necessary to give this Agreement the force of law in Australia and in New Zealand, as the case may be, and thereupon this Agreement shall have effect on and from the date specified for that purpose in that exchange of notes.

SCHEDULE—*continued*

2. Subject to paragraph 3, when this Agreement commences to have effect the Agreement on Social Security between the Government of Australia and the Government of New Zealand, signed at Melbourne on the Fifth day of October 1986, shall terminate and persons who were receiving benefits under that 1986 Agreement shall receive those benefits by virtue of this Agreement.

3. This Article shall not affect the provisions of paragraph 2 of Article 24 of the Agreement on Social Security between the Government of Australia and the Government of New Zealand signed at Melbourne on the Fifth day of October 1986.

ARTICLE 22

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:

(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, by virtue of this Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Agreement.

Done in duplicate at Canberra this thirty-first day of October 1988.

FOR THE GOVERNMENT
OF NEW ZEALAND:

GEOFFREY PALMER

FOR THE GOVERNMENT
OF AUSTRALIA:

B. L. HOWE

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, which is deemed to have come into force on 1 April 1990, replaces (and has the same effect as) the Social Security (Reciprocity with Australia) Act 1989, which was repealed by section 19 of the Social Welfare (Transitional Provisions) Act 1990.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 12 April 1990.

This order is administered in the Department of Social Welfare.