



# **Social Security (International Agreements) Act 1999 Amendment Regulations 2007 (No. 2)**

**Select Legislative Instrument 2007 No. 352**

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I, PHILIP MICHAEL JEFFERY, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Social Security (International Agreements) Act 1999*.

Dated 17 October 2007

P. M. JEFFERY  
Governor-General

By His Excellency's Command

MAL BROUGH  
Minister for Families, Community Services and Indigenous  
Affairs

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### 1 Name of Regulations

These Regulations are the *Social Security (International Agreements) Act 1999 Amendment Regulations 2007 (No. 2)*.

### 2 Commencement

These Regulations commence as follows:

- (a) on the day after they are registered — regulations 1 to 3;
- (b) on the day on which the Agreement between Australia and the Federal Republic of Germany on Social Security to govern persons temporarily employed in the territory of the other State (being the Agreement of that name done at Berlin on 9 February 2007) enters into force for Australia — Schedule 1;

- (c) on the day on which the Agreement on Social Security between the Government of Australia and the Government of the Republic of Korea (being the Agreement of that name done at Canberra on 6 December 2006) enters into force for Australia — Schedule 2;
- (d) on the day on which the Agreement between Australia and the Hellenic Republic on Social Security (being the Agreement of that name done at Canberra on 23 May 2007) enters into force for Australia — Schedule 3.

**3      *Amendment of Social Security (International Agreements) Act 1999***

Schedules 1 to 3 amend the *Social Security (International Agreements) Act 1999*.

T Schedule 1 T Amendment commencing on the day the Agreement between Australia and the Federal Republic of Germany on Social Security enters into force T

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## **Schedule 1**      **Amendment commencing on the day the Agreement between Australia and the Federal Republic of Germany on Social Security enters into force**

(regulation 3)

[1]      **Schedule 14**

*substitute*

### **Schedule 14—Germany**

Note:      See section 5.

#### **PART A**

AGREEMENT ON SOCIAL SECURITY BETWEEN AUSTRALIA AND THE FEDERAL REPUBLIC OF GERMANY

AUSTRALIA AND THE FEDERAL REPUBLIC OF GERMANY (the “Contracting Parties”)

DESIRING to strengthen the existing friendly relations between the two States and resolved to regulate their relations in the field of social security:

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HAVE AGREED as follows:

PART I  
GENERAL PROVISIONS

Article 1  
Definitions

1. For the purposes of this Agreement,
  - (a) “national” means,  
as regards the Federal Republic of Germany, a German citizen within the meaning of the Basic Law (*Grundgesetz*) for the Federal Republic of Germany; and  
as regards Australia, a citizen of Australia;
  - (b) “legislation” means,  
as regards the Federal Republic of Germany, the laws, regulations and other general legislative acts related to the branches of social security specified in paragraph 1(a) of Article 2; and  
as regards Australia, the laws specified in subparagraph 1(b) of Article 2;
  - (c) “competent authority” means,  
as regards the Federal Republic of Germany, the Federal Ministry of Labour and Social Affairs (*Bundesministerium für Arbeit und Sozialordnung*); and  
as regards Australia, the Secretary to the Commonwealth Department responsible for the laws specified in subparagraph 1(b) of Article 2;
  - (d) “institution” means,  
as regards the Federal Republic of Germany, the institution or authority responsible for the application of the legislation specified in paragraph 1(a) of Article 2; and  
as regards Australia, the institution or agency responsible for the administration of the laws specified in subparagraph 1(b) of Article 2;

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- (e) “German period of coverage” means a period of contributions or any other period insofar as it is, under the German legislation, equivalent to a period of contributions for the purposes of benefit entitlement;
  - (f) “period of Australian working life residence” means a period defined as such in the Australian legislation;
  - (g) “benefit” means, in relation to a Contracting 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 pension, benefit or allowance;
  - (h) “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;
  - (i) “carer payment” means, in relation to Australia a carer payment payable to the partner of a person who is in receipt of an Australian disability support pension or age pension.
2. Any term not defined in paragraph 1 has the meaning assigned to it in the applicable legislation.

## Article 2 Legislative scope

1. Unless otherwise provided in this Agreement, it shall apply:
- (a) as regards the Federal Republic of Germany, to the legislation concerning:
    - (i) Wage Earners’ Pension Insurance (*Rentenversicherung der Arbeiter*),
    - (ii) Salaried Employees’ Pension Insurance (*Rentenversicherung der Angestellten*),
    - (iii) Miners’ Pension Insurance (*Knappschaftliche Rentenversicherung*),
    - (iv) Steelworkers’ Supplementary Insurance (*Hüttenknappschaftliche Zusatzversicherung*),

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- (v) Farmers' Old Age Security (*Alterssicherung der Landwirte*); and
- (b) as regards Australia, to the Acts forming the social security law insofar as the law provides for, applies to or affects the following benefits:
- (i) age pension,
  - (ii) disability support pension,
  - (iii) carer payment,
  - (iv) pensions payable to widowed persons, and
  - (v) double orphan pension.
2. Notwithstanding the provisions of paragraph 1(b), this Agreement shall apply to women who are receiving wife pension at the date this Agreement comes into force and who are the wives of:
- (a) persons receiving age pension; or
  - (b) persons receiving disability support pension for the severely disabled.
3. This Agreement shall also apply to laws, regulations and other general legislative acts in so far as they amend, supplement or replace the legislation of the Contracting Parties.
4. Notwithstanding the provisions of paragraph 1, the legislation of the Contracting Parties shall not include any laws made at any time for the purpose of giving effect to any other agreement on social security or any supra-national law.
5. Australian carer payment and double orphan pension are included in this Agreement to reciprocate those proportions of German benefit included to support a spouse and other dependants.

### Article 3 Personal scope

Unless otherwise provided in this Agreement, it shall apply:

- (a) in the operation of the German legislation, to
  - (i) nationals of either Contracting Party;

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- (ii) refugees, within the meaning of Article 1 of the Convention of July 28, 1951 and of the Protocol of January 31, 1967 Relating to the Status of Refugees;
  - (iii) stateless persons, within the meaning of Article 1 of the Convention Relating to the Status of Stateless Persons of September 28, 1954;
  - (iv) other persons to the extent that they derive rights from a national of either Contracting Party, from a refugee or from a stateless person within the meaning of this Article;
  - (v) nationals of a state other than a Contracting Party, unless they are included in the group of persons specified in subparagraph (iv); and
- (b) in the operation of the Australian legislation, to any person who is or has been an Australian resident and, where applicable, to other persons in regard to the rights they derive from the persons described above.

Article 4  
Equality of treatment

1. Unless otherwise provided in this Agreement:
  - (a) in the application of the German legislation, persons specified in subparagraphs (a)(i), (ii), (iii) and (iv) of Article 3 who ordinarily reside in the territory of either Contracting Party shall be treated equally to German nationals; and
  - (b) in the application of the Australian legislation, persons specified in paragraph (b) of Article 3 shall be treated equally.
2. Unless otherwise provided in this Agreement, benefits under the German legislation shall be awarded to nationals of Australia, who ordinarily reside outside the territories of both Contracting Parties, under the same conditions as they are awarded to German nationals who ordinarily reside outside the territories of the Contracting Parties.



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Article 5  
Equivalence of territories

1. Unless otherwise provided in this Agreement, the German legislation which requires that the acquisition of an entitlement to benefits or the payment of benefits be dependent on ordinarily being resident in the Federal Republic of Germany shall not be applicable to the persons specified in subparagraphs (a)(i), (ii), (iii) and (iv) of Article 3 who ordinarily reside in Australia.
2. Subject to paragraph 3, where a person would be qualified for a benefit under the Australian legislation or under this Agreement except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged, but:
  - (a) is an Australian resident or ordinarily residing in the territory of the Federal Republic of Germany or of a third country with which Australia has implemented an agreement on social security that includes provision for co-operation in the lodgement and determination of claims for benefits; and
  - (b) is in Australia, the territory of the Federal Republic of Germany or the territory of that third country,that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purposes of lodging that claim, to be an Australian resident and in Australia on that date.
3. The requirement for a person to have been an Australian resident at some time shall not apply to a person who claims a double orphan pension under this Agreement.

PART II  
PROVISIONS CONCERNING BENEFITS

Article 6  
Totalisation and calculation – German benefits

The following shall apply as regards the German institution:

- (a) When German periods of coverage have been completed, periods of Australian working life residence shall also be

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taken into account for purposes of determining eligibility for benefits under German legislation, provided that these periods do not coincide with the above mentioned periods of coverage.

- (b) The periods of Australian working life residence to be taken into account under subparagraph (a) shall be assigned to that branch of insurance whose institution is responsible for determining entitlement to a pension as if only the German legislation is applied. If, according to the foregoing, the Miners' Pension Insurance is the competent institution, periods of Australian working life residence shall be taken into account for the Miners' Pension Insurance only if the relevant person was employed in a mining enterprise in underground operations during this time.
- (c) For purposes of determining eligibility for a benefit payable under the German legislation:
  - (i) a month which is recognised as a month in a period of Australian working life residence shall be considered as a month of contributions under the German legislation; and
  - (ii) a year which is recognised as a year in a period of Australian working life residence shall be considered as twelve months of contributions under the German legislation.
- (d) Earnings points shall be determined solely on the basis of pension rating periods to be taken into account under the German legislation in the calculation of German benefits.

#### Article 7

##### Totalisation – 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, under the Australian legislation for a benefit;

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- (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4 for that person; and
- (c) a German period of coverage,
- then for the purposes of a claim for that Australian benefit, that German period of coverage shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the Australian legislation, to be a period in which that person was an Australian resident.
2. 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 Australian legislation for qualification of that person for a benefit; and
- (b) has accumulated a German period of coverage in two or more separate periods that equals or exceeds in total the period referred to in subparagraph (a),
- the total of the German periods of coverage shall be deemed to be one continuous period.
3. For the purposes of this Article, where a person's period as an Australian resident and a German period of coverage coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.
4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:
- (a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least six months must be continuous; and
- (b) for the purposes of an Australian benefit that is payable to an Australian resident, no minimum period shall be required.

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5. 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 German period of coverage for which his or her partner accumulated a German period of coverage but any period during which the person and his or her partner both accumulated German periods of coverage shall be taken into account once only.

Article 8  
Calculation – Australian benefits

1. Subject to paragraph 2, where a person who is outside Australia is qualified for an Australian benefit by virtue of this Agreement, other than double orphan pension, the rate of benefit shall be determined according to the Australian legislation.
2. Subject to paragraph 3, 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 Australian legislation but, when assessing the income of that person for the purposes of calculating the rate of the Australian benefit, only a proportion of the German benefit shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months (not exceeding 300) of Australian working life residence used in the assessment of that person's Australian benefit by the amount of German benefit and dividing that product by 300.
3. Only a person receiving a proportionalised Australian benefit shall be entitled to receive the concessional assessment of income described in paragraph 2.
4. Where an Australian benefit is payable, whether by virtue of this Agreement or otherwise, to a person who ordinarily resides in the Federal Republic of Germany, Australia shall disregard, when assessing the income of that person, any German social assistance and payments of a similar character provided in case of need insofar as they are proposed by the liaison agencies specified in Article 16 and jointly approved by the competent authorities and listed in the Administrative Arrangement (*Verwaltungsvereinbarung*).

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5. The provisions in paragraphs 1, 2 and 4 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
  6. Subject to the provisions of paragraph 7, where an Australian benefit is payable only by virtue of the 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 German benefit to which the person is entitled;
    - (b) deducting that German 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).
  7. The provisions in paragraph 6 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
  8. Where a member of a couple is, or both that member and his or her partner are, entitled to a German benefit or benefits and/or any payment referred to in this Article, each of them shall be deemed, for the purposes of this Article and of the Australian legislation, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

#### Article 9

##### Payment of Australian benefits overseas

1. Australian benefits are also payable into the territory of the Federal Republic of Germany.
2. Where the Australian legislation provides that a benefit is payable outside the territory of Australia, then that benefit, when payable under this Agreement, is also payable outside the territories of both Contracting Parties.
3. Where qualification for an Australian benefit is subject to limitations as to time, then references to Australia in those limitations shall be read also as references to the territory of the Federal Republic of Germany.

4. Any provisions of Australian legislation which prohibit the payment of an Australian benefit to a former Australian resident who:
- (a) returns to Australia to again become an Australian resident;
  - (b) claims an Australian benefit; and
  - (c) departs Australia within a period specified in that legislation,
- shall not apply to a person who receives that benefit by virtue of the Agreement.
5. Where a double orphan pension would be payable to a person under the social security laws of Australia, in respect of a young person whose sole surviving parent died while that young person was an Australian resident, if that person and that young person were residents of Australia, that pension shall, subject to the provisions of those laws, be payable while that person and that young person are residents of the Federal Republic of Germany.

### PART III MISCELLANEOUS PROVISIONS

#### CHAPTER 1 ADMINISTRATIVE ASSISTANCE

##### Article 10 Mutual assistance

1. The institutions, associations of institutions, authorities and competent authorities of the Contracting Parties shall provide assistance to each other in the application of the legislation specified in paragraph 1 of Article 2 and in the implementation of this Agreement, in the same manner in which they apply their own legislation.

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2. The institution of one Contracting Party, when requested by the institution of the other Contracting Party, shall, to the extent permitted by its legislation, provide to that institution free of charge any medical data and documents in its possession relating to the general disability of an applicant or beneficiary.
  3. If an institution of one Contracting Party requires an applicant or beneficiary who lives in the territory of the other Contracting Party to undergo a medical examination, such examination shall, at the request of that institution, be arranged or carried out by the institution of the latter Contracting Party. The medical examination will be done at the expense of the requesting institution.
  4. The agencies referred to in paragraph 1 shall, within their respective areas of jurisdiction and to the extent possible, communicate to each other such information and transmit such documentation as may be required to maintain the rights and obligations of the persons concerned under the legislation specified in paragraph 1 of Article 2 and under this Agreement. Such information or documentation regarding a person shall also be transmitted to that person at his or her request.
  5. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the competent authorities for the reimbursement of certain types of expenses.

#### Article 11

##### Fees

1. Where, under the legislation of one Contracting Party documents submitted to an authority or institution of that Contracting Party are partly or fully exempt from administrative charges, including consular fees, this exemption shall also apply to documents which are submitted to an authority or institution of the other Contracting Party in accordance with its legislation.
2. Documents which, in the application of the legislation specified in paragraph 1 of Article 2 and in the implementation of this Agreement, must be submitted to an authority or institution of one Contracting Party, may be submitted to an authority or institution

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of the other Contracting Party without consular authentication or any other similar formality.

## Article 12 Languages of communication

In the application of the legislation specified in paragraph 1 of Article 2 and in the implementation of this Agreement, the agencies referred to in paragraph 1 of Article 10 may communicate in their respective official languages directly with each other as well as with persons concerned and with their representatives.

## Article 13 Lodgement of documents

1. If a claim for a benefit under the legislation of one Contracting Party has been submitted to an agency of the Contracting Party which, under the legislation of the latter Contracting Party, is competent to receive a claim for a corresponding benefit, that claim shall be deemed to have been submitted to the competent institution of the first Contracting Party on the same date as the claim was lodged with the agency in the other Contracting Party. This provision shall apply, as appropriate, to other claims, notices and appeals.
2. Where a claim, notice or appeal is received by an agency of one Contracting Party, that agency shall ensure it is forwarded without delay to the appropriate liaison agency of the other Contracting Party.
3. In relation to Australia, an appeal means an appeal submitted to a body established under the social security laws of Australia.
4. Subject to paragraph 5, a claim by a person for a benefit from a Contracting Party, whether lodged in the territory of that Contracting Party or of the other Contracting Party, shall be deemed to be a claim for a corresponding benefit from that other Contracting Party if the information disclosed by the person in the original claim indicates that the person may be qualified for corresponding benefit. The foregoing shall not apply if the person is under the normal age pension age of the other Contracting



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Party and the person explicitly requests that the determination of entitlement to old age benefits acquired under the legislation of the other Contracting Party be deferred.

5. Paragraph 4 shall not apply if the original claim or a copy is not received by the appropriate liaison agency of the other Contracting Party within six months of the lodgement of the original claim.

#### Article 14

##### Recovery of overpayments

1. Where a German institution has made an overpayment of a benefit to a person for any period and the Australian institution is to pay arrears of an Australian benefit for the same period, the Australian institution shall, at the request of that German institution, deduct from those arrears the amount of the overpayment by the German institution and shall transfer the amount so deducted to the German institution.
2. Where:
  - (a) a benefit is paid or payable under German legislation to a person in respect of a past period;
  - (b) for all or part of that period, Australia has paid to that person a benefit under its social security law; and
  - (c) the amount of the benefit paid by Australia would have been reduced had the benefit paid or payable under German legislation been paid during that period;then
  - (d) the amount that would not have been paid by Australia had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period shall be a debt due by that person and may be recovered by Australia; and
  - (e) Australia may determine that the amount or only part of that debt may be deducted from future payments of a benefit payable by Australia to that person.

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3. Where a German institution has not yet paid the benefit described in subparagraph 2(a) to the person:
    - (a) the German institution shall, at the request of the institution of Australia pay the amount of the benefit necessary to meet the debt described in subparagraph 2(d) to the Australian institution and shall pay any excess to the person; and
    - (b) any shortfall may be recovered by the competent authority of Australia under subparagraph 2(e).
  4. In paragraph 2, “benefit” means, in relation to Australia, a pension, benefit or allowance that is payable under the social security law of Australia.

Article 15  
Data protection

1. In providing assistance under Article 10, a Contracting Party shall supply to the other Contracting Party data about a person, particularly about any payments it makes to that person, only where that person:
  - (a) wishes to make use of any provision of the Agreement; or
  - (b) claims a benefit from the first Contracting Party after the Agreement enters into force; or
  - (c) is receiving a benefit from the second Contracting Party before the Agreement enters into force and authorises the first Contracting Party to provide the data to the second Contracting Party.
2. Notwithstanding any laws or administrative practices of a Contracting Party, no personal data concerning a person which is received by that Contracting Party from the other Contracting Party shall be transferred or disclosed to any other country or to any organisation within that other country without the prior written consent of that other Contracting Party.
3. The Contracting Parties agree that there is no obligation on any institution to disclose personal data except under paragraph 1.

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4. The processing and use of any personal data or any business or industrial secret made in accordance with this Agreement or with any arrangement for the implementation of the Agreement shall be governed by the respective national laws concerning the protection of data. The said data shall be transmitted to the bodies specified in Article 16 only. The recipient of the data shall be obliged to protect the data effectively against unauthorised access, modification and disclosure.
  5. Data transmitted in accordance with this Article shall not be disclosed by the recipient without authorisation and shall be processed or used only for the purposes of implementing this Agreement or the legislation to which it applies. The passing on of this data by the recipient for other purposes is permissible in the framework of the law of the Contracting Party receiving the data provided this serves social security purposes including related judicial proceedings. However, the foregoing shall not prevent the Contracting Party receiving the data from passing it on in cases that are mandatory under the laws and regulations of that Party for the interests protected by criminal law or for the purposes of taxation. In all other cases the passing on to bodies other than those specified in Article 16 shall only be permissible upon prior consent of the transmitting bodies.
  6. The transmitting body shall ensure that transmitted data is correct and reasonably necessary for the purpose for which the transmission is intended. Should the transmitting body find that data has been transmitted otherwise than in accordance with this paragraph the transmitting body shall notify the recipient immediately. The recipient shall be obliged to correct or delete the data. It shall, at the request of the transmitting body, notify that body of the purposes for which the transmitted data has been used and the results obtained from that usage.
  7. The recipient of the data shall, upon the request of a person, provide to that person details of the data transmitted in relation to that person and the uses for which that data is intended to be put. In all other cases, the right of the person concerned to receive details of the data held in relation to that person shall be

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determined by the national law of the Contracting Party whose  
body requested the information.

8. A recipient of data transmitted under this Agreement shall delete  
that data when it ceases to be necessary for the application of this  
Agreement or the legislation to which the Agreement applies.
9. Should the transmission of incorrect data result in a person  
receiving a lesser amount of benefit, the agency responsible for  
paying the benefit shall adjust the amount of the benefit and pay  
any retrospective amounts owing to the person when the correct  
data is received.

CHAPTER 2  
IMPLEMENTATION AND INTERPRETATION OF THE AGREEMENT

Article 16

Implementation arrangements and liaison agencies

1. The Governments of the Contracting Parties or the competent  
authorities may conclude arrangements for the implementation of  
this Agreement. The competent authorities shall keep each other  
informed about any amendments or additions to their legislation.
2. The following are designated as liaison agencies for the  
implementation of this Agreement:
  - (a) in the Federal Republic of Germany,  
for the Wage Earners' Pension Insurance,  
the Landesversicherungsanstalt Oldenburg-Bremen,  
Oldenburg  
for the Salaried Employees' Pension Insurance,  
the Bundesversicherungsanstalt für Angestellte, Berlin  
for the Miners' Pension Insurance,  
the Bundesknappschaft, Bochum  
for the Steelworkers' Supplementary Insurance,  
the Landesversicherungsanstalt für das Saarland,  
Saarbrücken

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- (b) in Australia,  
the institution responsible for the administration of the  
laws specified in subparagraph 1(b) of Article 2.
3. Where German legislation does not already make provision to this  
effect, the liaison agency designated for the Wage Earners’  
Pension Insurance system shall be responsible, within the scope  
of that system, for all procedures including the determination and  
award of benefits, provided that:
- (a) there are German periods of coverage and periods of  
Australian working life residence;
  - (b) the person entitled to a benefit ordinarily resides in  
Australia; or
  - (c) the person entitled to a benefit is an Australian national  
who ordinarily resides outside the territories of both  
Contracting Parties.
- This paragraph shall not apply to the provision of medical,  
occupational, and supplementary rehabilitation benefits.
4. The jurisdiction of the Railways Insurance Institution and the  
Seamen’s Insurance Institution shall remain unaffected.
5. The liaison agencies listed in paragraph 2 and the institutions  
mentioned in paragraph 4 shall, within their respective areas of  
jurisdiction, be responsible for generally informing the persons  
concerned about their rights and obligations under this  
Agreement.
6. The liaison agencies listed in paragraph 2 and the institutions  
mentioned in paragraph 4, with the participation of the competent  
authorities, shall conclude an Administrative Arrangement  
(*Verwaltungsvereinbarung*) setting out the administrative  
measures required and expedient for implementing this  
Agreement.
7. As far as possible, the liaison agencies listed in paragraph 2 and  
the institution mentioned in paragraph 4 shall compile statistics  
on the payments made under the Agreement for each calendar  
year. Where possible, these statistics will show the number and  
total amount of pensions and lump-sum settlements by type of  
pension. These statistics shall be exchanged.

8. Cash benefits payable to recipients in the territory of the other Contracting Party shall be paid without recourse to a liaison agency in that Contracting Party.

#### Article 17

##### Currency and exchange rate

1. To provide for the effective payment of benefits an institution of a Contracting Party may, at its discretion, pay a benefit to a person in the territory of the other Contracting Party in the currency of:
- (a) the first Contracting Party;
  - (b) the other Contracting Party; or
  - (c) a third country.
2. If benefits of a German institution are paid in the currency of the other Contracting Party or of a third country, the conversion rate shall be the rate of exchange in effect on the day when the remittance is made.

#### Article 18

##### Resolution of disputes

1. Disagreements between the two Contracting Parties regarding the interpretation or application of this Agreement shall, as far as possible, be settled by the competent authorities.
2. Unless otherwise agreed, if a disagreement cannot thus be resolved it shall, at the request of either Contracting Party, be submitted to an arbitration tribunal whose composition shall be agreed upon by the Contracting Parties in each instance. The arbitration tribunal shall establish its own rules of procedure, including the allocation of costs. The decisions of the arbitration tribunal shall be binding.

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PART IV  
TRANSITIONAL AND FINAL PROVISIONS

Article 19

Consideration of entitlements under the Agreement

1. This Agreement shall not establish any entitlement to benefits for any period prior to its entry into force.
2. Unless otherwise provided in the Agreement, when the Agreement is being implemented and when rights under it (including deciding eligibility for benefits under the Agreement) are being determined, all valid and relevant events including periods of coverage and periods as an Australian resident, no matter when they occurred, shall be taken into consideration.
3. The legal force of former decisions shall not preclude the application of this Agreement.
4. If a benefit has been determined under German legislation with binding force before the entry into force of this Agreement, a review and recalculation under this Agreement of this benefit shall only be carried out if the beneficiary explicitly so requests.

Article 20

Concluding Protocol

The attached concluding protocol shall form an integral part of this Agreement.

Article 21

Entry into force

1. This Agreement shall be subject to ratification; the instruments of ratification shall be exchanged in Berlin as soon as possible.
2. This Agreement shall enter into force on the first day of the second month following the month in which the instruments of ratification are exchanged.

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Article 22  
Period of the Agreement

1. This Agreement shall be concluded for an indefinite period of time. Either Contracting Party may denounce this Agreement in writing through diplomatic channels at the end of a calendar year by giving three months' notice. This period of notice shall be calculated from the day on which the notice is received by the other Contracting Party.
2. In the event of termination by denunciation, the provisions of this Agreement shall continue to apply in respect of claims to benefits acquired not later than the effective date of that termination; restrictive legislation regarding the exclusion of an entitlement or the suspension or withdrawal of benefits on the grounds of temporary or ordinary residence in another state shall not be applicable to such claims.

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

DONE at Canberra on this thirteenth day of December 2000 in two copies in the English and German languages, each text being equally authentic.

FOR AUSTRALIA:

FOR THE FEDERAL REPUBLIC OF  
GERMANY:

JOCELYN NEWMAN

Dr HORST BÄCHMANN and  
WALTER RIESTER

[Signatures omitted]



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CONCLUDING PROTOCOL TO THE AGREEMENT BETWEEN  
AUSTRALIA AND THE FEDERAL REPUBLIC OF GERMANY ON  
SOCIAL SECURITY

At the time of signing the Agreement on Social Security concluded this day between Australia and the Federal Republic of Germany, the plenipotentiaries of both Contracting Parties stated that they are in agreement on the following points:

1. With reference to Article 2 of the Agreement:
  - (a) Part II of the Agreement shall not apply to the Steelworkers' Supplementary Insurance and to the Farmers' Old Age Security of the Federal Republic of Germany;
  - (b) subject to paragraph (c), where under the German legislation both the conditions for the application of the Agreement and the conditions for the application of any other convention or supranational arrangement are satisfied, the German institution shall disregard that other convention or supranational arrangement when applying the Agreement; and
  - (c) paragraph 4 of Article 2 and the preceding subparagraph shall not apply if the social security legislation, which arises for the Federal Republic of Germany from international treaties or supranational laws or is designed to implement them, contains provisions relating to the apportionment of insurance burdens.
2. With reference to Article 4 of the Agreement:
  - (a) provisions relating to the apportionment of insurance burdens that may be contained in international treaties between the Federal Republic of Germany and other States shall not be affected;
  - (b) the German legislation guaranteeing the participation of insured people and employers in the self government bodies of the institutions and their associations and in the

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adjudication of social security matters shall remain  
unaffected; and

- (c) Australian nationals who ordinarily reside outside the  
territory of the Federal Republic of Germany shall be  
entitled to voluntary coverage under the legislation  
specified under subparagraphs 1(a)(i), (ii) and (iii) of  
Article 2 if they have periods of contributions under that  
legislation for at least sixty calendar months. This shall  
also apply to persons specified in subparagraphs (a)(ii) and  
(iii) of Article 3 who ordinarily reside in the territory of  
Australia.

3. With reference to Article 5 of the Agreement:

- (a) With respect to contingencies under German Industrial  
Accident Insurance which occurred prior to 1 January  
1997 the following shall apply:

Article 5 shall apply, as appropriate, to cash benefits  
payable under German Industrial Accident Insurance to  
beneficiaries who are Australian nationals and who  
ordinarily reside in Australia, provided that the applicable  
law of Australia or of a federal state or territory regarding  
statutory accident insurance provides for payment of  
corresponding cash benefits to German nationals who  
ordinarily reside in the territory of the Federal Republic of  
Germany. This shall apply, as appropriate, with regard to  
the persons specified in subparagraphs (a)(ii), (iii) and (iv)  
of Article 3 who ordinarily reside in Australia, provided  
that the applicable law of Australia or of a federal state or  
territory regarding statutory accident insurance provides  
for the payment of corresponding cash benefits to the  
persons specified in subparagraphs (a)(ii), (iii) and (iv) of  
Article 3, who ordinarily reside in the territory of the  
Federal Republic of Germany;

- (b) the German legislation regarding cash benefits based on  
period of coverage completed under laws other than  
(German) federal law shall not be affected;

- 
- (c) the German legislation regarding cash benefits in respect of occupational accidents (including occupational diseases) for which the injured party was not insured under (German) federal law at the time the accident occurred shall not be affected;
  - (d) the German legislation regarding medical, occupational and supplementary rehabilitation benefits provided by a pension insurance institution shall not be affected. Australian legislation which provides for, applies to or affects disability support pension for a person who is not severely disabled shall not be affected;
  - (e) with regard to a pension under the German legislation governing reduced earning capacity, Article 5 of the Agreement shall apply to persons who ordinarily reside in Australia only if entitlement exists when the labour market situation is disregarded; and
  - (f) the German legislation providing for the suspension of claims under German pension insurance for persons who go abroad to evade criminal proceedings against them shall not be affected.
4. With reference to Article 6 of the Agreement:
- (a) Article 6 shall apply, as appropriate, to benefits which are granted at the discretion of an institution under the German legislation;
  - (b) residence periods in Australia during which an employment or self employment was exercised shall be equivalent to the periods of compulsory contributions required under the German legislation for a claim to a pension;
  - (c) where the German legislation provides that the entitlement to benefits requires the completion of certain periods of coverage within a specified period and where the legislation also provides that this period is extended by certain circumstances or periods of coverage, periods of coverage under the legislation of the other Contracting Party or comparable circumstances within the territory of the other Contracting Party shall be taken into account for

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such an extension. Comparable circumstances are periods during which disability or age pensions or benefits on account of sickness, unemployment or industrial accidents (with the exception of pensions) were paid under the Australian legislation as well as periods of child raising in Australia; and

- (d) mining enterprises within the meaning of subparagraph (b) of Article 6 are enterprises which mine minerals or similar substances and those which quarry stone and earth predominantly in underground operations.

5. With reference to Article 9 of the Agreement:

Australian disability support pension under the Agreement shall not be payable for more than 26 weeks to a person who is not severely disabled while that person is outside Australia.

6. With reference to Article 15 of the Agreement:

A person who:

- (i) is in receipt of a pension on account of reduced earning capacity from the Federal Republic of Germany at the time the Agreement enters into force;
- (ii) ceases to be entitled to that pension because of age; and
- (iii) immediately qualifies for an age pension from the Federal Republic of Germany,

shall be deemed not to have claimed that age pension for the purposes of subparagraph 1(b) of Article 15.

7. With reference to Article 16 of the Agreement:

German court decisions and German institutions' notifications may be communicated direct to persons residing in Australia and may be sent by registered mail with acknowledgement of receipt. The first sentence shall also apply to decisions, notifications, and other documents which must be served, issued in connection with the implementation of the German law governing war victims' assistance and those laws which declare the first mentioned law to be applied accordingly.

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8. In the implementation of the Agreement, the German legislation, to the extent that it contains more favourable provisions for persons who have suffered because of their political attitude or for reasons of their race, religion or ideology shall not be affected.

DONE at Canberra on this thirteenth day of December 2000 in two copies in the English and German languages, each text being equally authentic.

FOR AUSTRALIA:

FOR THE FEDERAL REPUBLIC OF  
GERMANY:

JOCELYN NEWMAN

Dr HORST BÄCHMANN and  
WALTER RIESTER

[Signatures omitted]

## **PART B**

### **Agreement between Australia and the Federal Republic of Germany on Social Security to govern persons temporarily employed in the territory of the other State ("Supplementary Agreement")**

Australia and the Federal Republic of Germany,

**Desiring** to strengthen the existing friendly relations between the two States and resolved to expand their mutual cooperation in the field of social security and to facilitate the performance of work in the other State and in particular, to avoid that an employee is subject to the legislation of both States at the same time have agreed upon the following to supplement the Agreement on Social Security between Australia and the Federal Republic of Germany of 13 December 2000:

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## Article 1 Definitions

1. For the purposes of this Supplementary Agreement,

(a) “territory” means,

as regards the Federal Republic of Germany,  
the territory of the Federal Republic of Germany;  
as regards Australia,  
the territory of Australia;

(b) “legislation” means,

as regards the Federal Republic of Germany,  
the laws, regulations and other general legislative acts related to the  
branches of social security covered by the scope of this  
Supplementary Agreement (paragraph 1(a) of Article 2);  
as regards Australia,  
the laws covered by the scope of this Supplementary Agreement  
(paragraph 1(b) of Article 2);

(c) “competent authority” means,

as regards the Federal Republic of Germany,  
the Federal Ministry of Labour and Social Affairs  
*(Bundesministerium für Arbeit und Soziales)*;  
as regards Australia,  
the Commissioner of Taxation or an authorised representative of  
the Commissioner;

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(d) “institution” means,

as regards the Federal Republic of Germany,  
the insurance institution responsible for the implementation of the  
legislation specified in paragraph 1 (a) of Article 2 and the body  
designated by the competent authority;

as regards Australia,  
the Commissioner of Taxation or an authorised representative of  
the Commissioner.

2. Any term not defined in paragraph 1 has the meaning assigned to it in  
the applicable legislation.

## **Article 2**

### **Legislative scope**

1. This Supplementary Agreement shall apply to the following  
legislation:

(a) as regards the Federal Republic of Germany,  
the legislation concerning the Statutory Pension Insurance;

(b) as regards Australia,  
the legislation concerning the Superannuation Guarantee.

2. This Supplementary Agreement shall also apply to laws, regulations  
and other general legislative acts in so far as they amend, supplement or  
replace the legislation of the Contracting States.

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### **Article 3**

#### **Personal scope**

This Supplementary Agreement shall apply in respect of all persons who are ordinarily resident or employed in the territory of either Contracting State.

### **Article 4**

#### **Applicable legislation for employees**

1. Unless otherwise provided in this Supplementary Agreement, an employee shall be subject to the legislation of the Contracting State in whose territory he is actually performing the work.
2. Paragraph 1 shall apply analogously to self-employed persons.

### **Article 5**

#### **Applicable legislation in case of detachment**

When an employee who is employed in one Contracting State is sent by his employer, who ordinarily engages in considerable business activities in the sending State, to the territory of the other Contracting State in the context of that employment to perform services there for this employer that are known to be time-limited beforehand, then, provided that the employee concerned continues to be subject to the legislation of the first Contracting State in relation to that employment, only the legislation of the first Contracting State shall continue to apply with regard to that employment during the first forty-eight calendar months as though the employee were still employed in the territory of the first Contracting



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State. The period of forty-eight calendar months shall start on the first day of the calendar month in which the employee takes up employment in the territory of the other Contracting State.

#### **Article 6**

##### **Applicable legislation on board sea-going vessels**

This Supplementary Agreement shall not affect the application of the national legislation of the two Contracting States for persons who work on board a sea-going vessel.

#### **Article 7**

##### **Applicable legislation for persons employed with diplomatic missions or consular posts**

Nothing in this Supplementary Agreement shall affect the application of the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or of the Vienna Convention on Consular Relations of 24 April 1963.

#### **Article 8**

##### **Exceptions from the provisions on the applicable legislation**

1. At the joint request of the employee and the employer or at the request of a self-employed person, the competent authorities of the Contracting States or the bodies designated by them may, by mutual agreement, derogate from the provisions of this Supplementary Agreement in relation to the applicable legislation provided that the person concerned continues to be subject or will be subjected to the

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legislation of either Contracting State. In this regard, the nature and the circumstances of the employment shall be taken into account.

2. The application shall be filed in the Contracting State whose legislation is to apply.

### **Article 9**

#### **Administrative assistance**

The competent authorities and the institutions of the Contracting States shall provide mutual assistance to each other in the implementation of this Supplementary Agreement as if they were applying their own legislation. The assistance shall be provided free of charge.

### **Article 10**

#### **Languages of communication, service and legalisation**

1. In implementing this Supplementary Agreement, the competent authorities and the institutions of the Contracting States may communicate in their respective official languages directly with each other as well as with persons concerned and their representatives. Documents may be served on a person who is staying in the territory of the other Contracting State directly and by registered mail with acknowledgment of receipt.

2. Documents, especially applications and certifications, may not be rejected because they are written in the official language of the other Contracting State.

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3. Documents, especially certifications, to be submitted in application of this Supplementary Agreement shall not require legalisation or any other similar formality.

### **Article 11**

#### **Data protection**

1. Where personal data is transmitted under this Supplementary Agreement, the following shall apply whilst the laws applicable to each Contracting State shall be duly observed:

- (a) The data may, for the purposes of implementing this Supplementary Agreement and the legislation to which it applies, be transmitted to the competent bodies in the receiving State. The receiving body may only use the data for these purposes. The passing on of this data to other bodies within the receiving State or the use of this data in the receiving State for other purposes is permissible in the framework of the law of the receiving State provided this serves social security purposes including related judicial proceedings.

However, the foregoing shall not prevent the passing on of that data in cases where doing so is mandatory under the laws and regulations of the receiving State for the interests protected by criminal law or for the purposes of taxation. In all other cases the passing on to other bodies shall be only permissible upon prior consent of the transmitting body.

- (b) In individual cases the recipient of the data shall, at the request of the transmitting body, inform that body of the use of the transmitted data and the results obtained thereof.
- (c) The transmitting body shall ensure that the data to be transmitted is correct and that its transmission is necessary and proportionate with regard to the purposes pursued with the transmission of the data. In this context, any prohibition to transmit data under the respective national law has to be respected. Data shall not be transmitted if the transmitting body reasonably assumes that doing so would violate the purpose of a national law or injure any interests of the person concerned that are worthy of protection. If it becomes evident that incorrect data or data the transmission of which was not permissible under the law of the transmitting State has been transmitted, the receiving body has to be immediately notified of this fact. The receiving body is obliged to correct or delete this data without delay.
- (d) Upon request, the person concerned shall be informed of any personal data transmitted and the intended use of that data. In all other cases, the right of the person concerned to receive information about any personal data held in relation to that person shall be determined by the national law of the Contracting State whose body requests the information.

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- (e) Transmitted personal data shall be deleted as soon as it is no longer required for the purpose for which it was transmitted, and if there is no reason to assume that social security interests of the person concerned which are worthy of protection will be affected by the deletion of the data.
- (f) The transmitting and the receiving bodies shall record the transmission and the receipt of personal data.
- (g) The transmitting and the receiving bodies shall protect transmitted personal data effectively against unauthorized access, unauthorized modification and unauthorized disclosure.
2. The provisions of paragraph 1 shall apply analogously to business and industrial secrets.

## **Article 12**

### **Implementing arrangements**

1. The Governments of the Contracting States or the competent authorities may conclude arrangements necessary for the implementation of this Supplementary Agreement. The competent authorities shall inform each other of any amendments and additions to their legislation which is covered by the scope of this Supplementary Agreement (paragraph 1 of Article 2).

2. The liaison agencies hereby set up for the implementation of this Supplementary Agreement are:

- (a) in the Federal Republic of Germany,  
German Liaison Agency Health Insurance – International  
*(Deutsche Verbindungsstelle Krankenversicherung – Ausland*  
*(DVKA), Bonn;*
- (b) in Australia,  
the Australian Taxation Office.

3. The liaison agencies may, within their respective areas of jurisdiction and with the participation of the competent authorities, agree upon the administrative measures necessary and appropriate for the implementation of this Supplementary Agreement. However, the provisions of paragraph 1 shall remain unaffected.

### **Article 13**

#### **Settlement of disputes**

- 1. Disagreements between the two Contracting States regarding the interpretation or application of this Supplementary Agreement shall be settled, as far as possible, by the competent authorities.
- 2. If a disagreement cannot be settled in this way, it shall, if necessary, be settled by a joint ad hoc commission set up by mutual agreement.

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## **Article 14**

### **Concluding provision**

This Supplementary Agreement shall not affect the Agreement on Social Security between the Federal Republic of Germany and Australia of 13 December 2000.

## **Article 15**

### **Concluding Protocol**

The attached Concluding Protocol shall form an integral part of this Supplementary Agreement.

## **Article 16**

### **Ratification and entry into force**

1. This Supplementary Agreement shall be subject to ratification; the instruments of ratification shall be exchanged as soon as possible in Canberra.
2. This Supplementary Agreement shall enter into force on the first day of the second month following the month in which the instruments of ratification have been exchanged.

## **Article 17**

### **Duration of the Supplementary Agreement**

1. This Supplementary Agreement shall be concluded for an indefinite period of time. Either Contracting State may terminate it through diplomatic channels at the end of the calendar year giving three months'

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Australia and the Federal Republic of Germany on Social Security  
enters into forceT

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written notice. The relevant date for calculating the period of notice shall be the day on which the notice is received by the other Contracting State.

2. This Supplementary Agreement shall also cease to be in force if the Agreement on Social Security between the Federal Republic of Germany and Australia of 13 December 2000 ceases to be in force.

3. In the event that this Supplementary Agreement shall cease to be in force in accordance with paragraph 1 or 2, the Supplementary Agreement shall continue to have effect in relation to all persons who immediately before the date of termination, are subject only to the legislation of one Contracting State by virtue of Article 5 or 8 provided the person continues to meet the corresponding requirements.

**In witness whereof**, the undersigned, being duly authorized thereto, have signed this Supplementary Agreement.

Done at Berlin on the ninth day of February 2007, in duplicate in the English and German languages, each text being equally authentic.

**For the Government of  
Australia:**

**For the Government of the  
Federal Republic of Germany:**



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## **Concluding Protocol**

**to**

### **the Supplementary Agreement between Australia and the Federal Republic of Germany on Social Security to govern persons temporarily employed in the territory of the other State**

At the time of signing the Supplementary Agreement between Australia and the Federal Republic of Germany on Social Security to govern persons temporarily employed in the territory of the other State concluded this day, the plenipotentiaries of both Contracting States stated that they are in agreement on the following points:

1. With reference to paragraph 1(a) of Article 2 of the Supplementary Agreement:

(a) If, by virtue of Articles 4, 5 and 8 of the Supplementary Agreement, German legislation applies to a person working in the territory of Australia, the German laws and regulations in the field of employment promotion shall also be applicable to this person and his employer in the same way.

(b) If, by virtue of Articles 4, 5 and 8 of the Supplementary Agreement, Australian legislation applies to a person working in the territory of the Federal Republic of Germany, the German laws and regulations in the field of employment promotion shall not be applicable to this person and his employer.

2. With reference to Articles 4 to 8 of the Supplementary Agreement:

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Persons to whom German legislation applies shall also include those who, under German legislation, are insurance-free or exempted from insurance.

3. With reference to Article 5 of the Supplementary Agreement:

(a) It shall not be considered a case of detachment to the other Contracting State in particular when:

- the work of the detached employee does not correspond to the employer's business operations in the sending State;
- the employer of the detached employee ordinarily does not engage in considerable business activities in the sending State;
- the person recruited for the purpose of detachment is not ordinarily resident in the sending State at that time;
- this constitutes illegal labour leasing under German law; or
- the employee has worked in the sending State for less than two months after termination of the last period of detachment.

(b) For persons who are already detached on the day of entry into force of the Supplementary Agreement the specified period shall begin on that date.

(c) Article 5 of the Supplementary Agreement shall apply analogously to a self-employed person who ordinarily engages in considerable business activities in the territory of the Federal Republic of Germany if that person temporarily works in the territory of Australia on a time limited basis. In this situation only

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the legislation of the Federal Republic of Germany shall continue to apply with regard to that work during the first forty-eight calendar months as though the self-employed person were still working in the territory of the Federal Republic of Germany. The period of forty-eight calendar months shall start on the first day of the calendar month in which the self-employed person takes up work in the territory of Australia. Item 3 (b) shall apply analogously.

4. With reference to Article 8 of the Supplementary Agreement:

- (a) Where, in application of Article 8 of the Supplementary Agreement, German legislation applies to a person, the person shall be deemed to be employed or to work at the place where he or she was last employed or working; however, a different arrangement resulting from the previous application of Article 5 of the Supplementary Agreement shall continue to be effective. When he or she was previously not employed or working in the territory of the Federal Republic of Germany, he or she shall be deemed to be employed or working at the place where the competent German authority has its seat.
- (b) Article 8 of the Supplementary Agreement shall apply in particular to an employee of an enterprise located in one Contracting State who is temporarily employed in the other Contracting State by an associated enterprise and, during this period, receives remuneration in the state of employment at the expense of the associated enterprise.

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Australia and the Federal Republic of Germany on Social Security  
enters into forceT

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5. With reference to paragraphs 1(a) and (e) of Article 11 of the  
Supplementary Agreement:

With regard to Australia, the term “social security” shall also include  
the Superannuation Guarantee.

**ARRANGEMENT FOR THE IMPLEMENTATION OF THE  
SUPPLEMENTARY AGREEMENT OF 9 FEBRUARY 2007  
BETWEEN AUSTRALIA AND FEDERAL REPUBLIC OF  
GERMANY ON SOCIAL SECURITY TO GOVERN PERSONS  
TEMPORARILY EMPLOYED IN THE TERRITORY OF THE  
OTHER STATE**

The Government of Australia and the Government of the Federal  
Republic of Germany, on the basis of paragraph 1 of Article 12 of the  
Agreement of 9 February 2007 between Australia and the Federal  
Republic of Germany on Social Security to govern persons temporarily  
employed in the territory of the other State,

**hereinafter** referred to as the “Supplementary Agreement”

**have** agreed as follows:

**Part I  
General provisions**

**Article 1  
Definitions**

Where terms which appear in the Supplementary Agreement are used in  
this Arrangement, they shall have the same meaning as they have in the  
Supplementary Agreement.

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**Article 2**  
**Duty to inform**

The liaison agencies set up pursuant to paragraph 2 of Article 12 of the Supplementary Agreement and the bodies designated by the competent authorities pursuant to Article 8 of the Supplementary Agreement shall, within their respective areas of jurisdiction, be responsible for generally informing the persons concerned about the Supplementary Agreement.

**Article 3**  
**Duty to communicate facts**

1. The bodies referred to in paragraph 2 of Article 12, in Article 8 and in Article 9 of the Supplementary Agreement shall, within their respective areas of jurisdiction, communicate to each other and to the persons concerned the facts and transmit the evidence necessary to secure the rights and obligations that follow from the legislation specified in paragraph 1 of Article 2 of the Supplementary Agreement and the Supplementary Agreement and this Arrangement.

2. Where a person is obliged, under the legislation specified in paragraph 1 of Article 2 of the Supplementary Agreement, under the Supplementary Agreement or under this Arrangement, to communicate to the institution or another body, certain facts, this obligation shall also apply with regard to corresponding facts obtaining in the territory of the other Contracting State or under its legislation. This shall also apply if a person has to transmit certain evidence.

3. Article 11 of the Supplementary Agreement shall also be applied to the duty to communicate facts under paragraphs 1 and 2.

**Article 4**  
**Certificate on the applicable legislation**

1. In the circumstances described in Articles 5 and 8 of the Supplementary Agreement, the competent authority or the competent body of the Contracting State whose legislation is applicable shall, on request, issue a certificate stating, in respect of the employment in

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question, that this legislation is applicable to the employee and the employer. A specific period of validity must be given on the certificate.

2. Where German legislation is applicable, the certificate shall, in the circumstances described in Article 5 of the Supplementary Agreement, be issued by the health insurance institution to which the pension contributions are paid, and by the *Deutsche Rentenversicherung Bund*, Berlin, in any other case. In the circumstances described in Article 8 of the Supplementary Agreement, the *Deutsche Verbindungsstelle Krankenversicherung - Ausland* (DVKA) - (German Liaison Agency Health Insurance- International), Bonn, shall issue the certificate.

3. Where Australian legislation is applicable, the certificate shall be issued by the Commissioner of Taxation, or an authorised representative of the Commissioner.

4. If there are doubts as to whether the legislation referred to in the certificate is actually applicable, or if the facts certified therein differ from the actual circumstances, the body that has issued the certificate shall, on request, review and correct it, if necessary.

## **Part II Final Provision**

### **Article 5 Entry into force and duration of the Arrangement**

1. This Arrangement shall enter into force on the date on which both Governments have informed each other that the national requirements for such entry into force have been fulfilled. The relevant date shall be the day on which the last notification is received.

2. This Arrangement is to be applied from the date of the entry into force of the Supplementary Agreement and shall have the same period of duration.

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Done at Berlin on the ninth February 2007 in duplicate in the English and German languages, each text being equally authentic.

**For the Government of  
Australia:**

**For the Government of the  
Federal Republic of Germany:**

## **Schedule 2**      **Amendment commencing on the day the Agreement between Australia and the Republic of Korea enters into force**

(regulation 3)

### **[1]      After Schedule 19**

*insert in correct numerical position*

## **Schedule 21 — Republic of Korea**

Note: See Section 5.

### **AGREEMENT ON SOCIAL SECURITY BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE REPUBLIC OF KOREA**

The Government of Australia and the Government of the Republic of Korea (hereinafter referred to as the “Contracting Parties”),

Being desirous of regulating the relationship between their two countries in the field of social security and coverage,

Have agreed as follows: ‘

#### **PART I General Provisions**

##### **Article 1 Definitions**

1. For the purposes of this Agreement:
  - (a) “**national**” means, as regards the Republic of Korea (hereinafter referred to as “Korea”), a national of Korea as



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defined in the Nationality Law, as amended, and as regards Australia, a citizen of Australia;

- (b) **“legislation”** means, in relation to Korea, the laws and regulations specified in paragraph 1(a) of Article 2, and in relation to Australia, the laws specified in paragraph 1 (b)(i) of Article 2 except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the laws specified in paragraph 1 (b)(ii) of Article 2;
- (c) **“Competent Authority”** means, as regards Korea, the Minister of Health and Welfare, and as regards Australia, the Secretary to the Commonwealth Department responsible for the legislation specified in paragraph 1(b)(i) of Article 2, except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner;
- (d) **“agency”** means, as regards Korea, the National Pension Service, and, as regards Australia, the institution or agency which has the task of implementing the Australian legislation;
- (e) **“period of coverage”** in relation to Korea means a period of contributions under the legislation of Korea and any other period taken into account under that legislation for establishing an entitlement to benefits or for calculating the amount of benefits;
- (f) **“period of Australian working life residence”** means, unless otherwise provided in this Agreement, a period defined as such in the legislation of Australia but does not include any period deemed pursuant to Article 16 to be a period in which that person was an Australian resident;
- (g) **“benefit”** means, in relation to Korea, any benefit provided for in the legislation specified in paragraph 1(a) of Article 2 and in relation to Australia, a benefit, pension or allowance for which provision is made in the Australian legislation as specified in paragraph 1 (b)(i) of Article 2, and includes any

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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 Australian legislation as specified in paragraph 1 (b)(i) of Article 2 but, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee as specified in paragraph 1 (b)(ii) of Article 2.

2. Any term not defined in this Article shall have the meaning assigned to it in the legislation of the Contracting Parties specified in Article 2.

## **Article 2** **Legislative Scope**

1. This Agreement shall apply to the following legislation:
  - (a) As regards Korea,
    - (i) the National Pension Act and enforcement rules and regulations thereof; and
    - (ii) with regard to benefits under the Agreement, the provisions of the legislation under the preceding sub-paragraph (a)(i) concerning old age pension and lump-sum refund;
  - (b) As regards Australia,
    - (i) the Acts forming the social security law in so far as the law provides for, applies to or affects, age pension; and
    - (ii) the law concerning the superannuation guarantee: the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Regulations*.
2. Unless otherwise provided in this Agreement, the legislation referred to in paragraph 1 of this Article shall not include treaties or other international agreements on social security that may be concluded between one Contracting Party and a third State.

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3. This Agreement shall also apply to future legislation which amends, supplements, consolidates or supersedes the legislation specified in paragraph 1 of this Article. However, this Agreement shall not apply to the future legislation which extends the existing legislation of one Contracting Party to new categories of beneficiaries unless the Competent Authorities of the Contracting Parties agree otherwise.

### **Article 3**

#### **Personal Scope**

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident; or
- (b) is or has been subject to the legislation of Korea;

and, where applicable, to other persons in regard to the rights derived from the person described above.

### **Article 4**

#### **Equality of Treatment**

Unless otherwise provided in this Agreement, all persons to whom this Agreement applies in accordance with Article 3 shall be treated equally by a Contracting Party in the application of its legislation regarding eligibility for and payment of benefits which arise whether directly under the legislation of that Contracting Party or by virtue of this Agreement.

### **Article 5**

#### **Export of Benefits**

- 1. Unless otherwise provided in this Agreement, any provision of the legislation of one Contracting Party which restricts entitlement to or payment of cash benefits solely because the person resides outside or is absent from the territory of that Contracting Party shall not be applicable to the persons who reside in the territory of the other Contracting Party.
- 2. Where the legislation of a Contracting Party provides that a benefit is payable outside the territory of that Contracting Party, then that benefit, when payable by virtue of this Agreement, is also payable outside the territories of both Contracting Parties.

3. In relation to Australia, any additional amount, increase or supplement that is payable in addition to a benefit under this Agreement, as defined in Article 1, shall be payable outside the territory of Australia only according to the provisions of the Acts specified in paragraph 1(b)(i) of Article 2.

## **PART II**

### **Provisions on Coverage**

#### **Article 6**

##### **Purpose of this Part**

The purpose of this Part is to ensure that employers and employees who are subject to the legislation of Korea or Australia do not have a double liability under the legislation of Korea and Australia in respect of the same work of an employee.

#### **Article 7**

##### **Application of this Part**

1. This Part applies if an employee and/or the employer of the employee would, apart from this Part, be subject to the legislation of both Parties in respect of the work of the employee or remuneration paid for the work.
2. For the purposes of Articles 6, 7, and 11, the legislation includes, with regards to Korea, the statutory pension scheme for civil servants.

#### **Article 8**

##### **General Provisions**

1. Except as otherwise provided in this Part, a person employed within the territory of one Contracting Party and the person's employer shall, with respect to that employment, be subject only to the legislation of that Contracting Party.
2. A person, who is a resident of Korea and is engaged in self-employment in the territory of either Contracting Party in respect of that self-employment, shall be subject only to the legislation of Korea.

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3. This Agreement shall not preclude the possibility for a person to be voluntarily insured under the Korean legislation.

**Article 9**  
**Seconded Workers**

1. If an employee:
- (a) is covered by the legislation of one Contracting Party (the first Contracting Party); and
  - (b) was sent, whether before, on or after the entry into force of this Agreement, by an employer who is subject to the legislation of the first Contracting Party to work in the territory of the other Contracting Party (the second Contracting Party); and
  - (c) is working in the territory of the second Contracting Party in the employment of the employer or a related entity of that employer; and
  - (d) has been in the territory of the second Contracting Party for a period not exceeding 5 years after being sent to work in that territory by the employer; and
  - (e) is not working permanently in the territory of the second Contracting Party;
- the employer of the employee and the employee shall be subject only to the legislation of the first Contracting Party in respect of the work and the remuneration paid for the work.
2. In case the duration for which the employee is working continues beyond the period specified in paragraph 1(d) of this Article, the legislation of the first Contracting Party shall continue to apply, provided that the Competent Authorities of both Contracting Parties or the agencies designated by them consent upon the joint request of the employee and the employer.
3. For the purposes of paragraph 1(c) of this Article, an entity is a related entity of an employer if the entity and the employer are members of the same wholly or majority owned group.

**Article 10**  
**Mariners and Aircraft Crew**

If an employee is working in the employment of an employer on a ship or aircraft in international traffic, the employer of the employee and the employee shall in respect of the employment and the remuneration paid for that employment be subject only to the legislation of the Contracting Party of which the employee is a resident.

**Article 11**  
**Member of Diplomatic Mission and Civil Servants**

1. Nothing in this Agreement shall affect the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or of the Vienna Convention on Consular Relations of 24 April 1963.
2. If an employee:
  - (a) is covered by the legislation of one Contracting Party (the first Contracting Party); and
  - (b) was sent, whether before, on or after the entry into force of this Agreement, by the Government of the first Contracting Party to work in the territory of the other Contracting Party (the second Contracting Party); and
  - (c) is working in the territory of the second Contracting Party in the employment of the Government of the first Contracting Party; and
  - (d) is not working permanently in the territory of the second Contracting Party;

the employer of the employee and the employee shall be subject only to the legislation of the first Contracting Party in respect of the work and the remuneration paid for the work. For the purposes of this paragraph, the term "Government" includes a political subdivision or local authority or any entity treated as such by either Contracting Party.

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**Article 12**  
**Modification Provision**

The Competent Authorities of both Contracting Parties or the agencies designated by them may agree to grant an exception to the provisions of this Part with respect to particular persons or categories of persons provided that any affected person shall be subject to the legislation of one Contracting Party.

**PART III**  
**Provisions relating to Korean Benefits**

**Article 13**  
**Totalisation and Calculation of Pensions**

1. For the purposes of this Article a period of Australian working life residence means a period:
  - (a) defined as such in the legislation of Australia; and
  - (b) during which the person was employed or self-employed or the person's employer was subject to the legislation specified in paragraph 1(b)(ii) of Article 2.
2. When periods of coverage have been completed under the legislation of Korea, the agency of Korea shall, in determining eligibility for benefits under the legislation which it applies, take into account, if necessary, periods of Australian working life residence, provided that such periods do not overlap with periods of coverage under the legislation of Korea.
3. The calculation of the pension shall be determined by the legislation of Korea unless otherwise provided in this Agreement.
4. Where periods of Australian working life residence are taken into account to establish eligibility for benefits under the legislation of Korea in accordance with paragraph 2 of this Article, the benefit due shall be determined as follows:
  - (a) the agency of Korea shall first compute a pension amount equal to the amount that would have been payable to the person if the total of the periods of Australian working life residence and periods of coverage in Korea had been

completed under the legislation of Korea. To determine the pension amount, the agency of Korea shall take into account the person's average standard monthly income while covered under the legislation of Korea; and

- (b) the agency of Korea shall calculate the partial benefit to be paid in accordance with the legislation of Korea based on the pension amount calculated according to the preceding subparagraph, in proportion to the ratio of the duration of the periods of coverage taken into consideration under the legislation of Korea to the total duration of the periods of Australian working life residence and periods of coverage taken into consideration under the legislation of Korea.

#### **Article 14 Special Provisions**

1. Lump-sum refunds shall be granted to Australian nationals under the same conditions as they are granted to Korean nationals in accordance with the legislation of Korea. Notwithstanding Article 4 of this Agreement, lump-sum refunds shall be paid to nationals of a third State only in accordance with the legislation of Korea.
2. For the purposes of Parts III and IV, the periods of coverage for which contributions have been refunded in lump-sum shall not be certified by the agency of Korea as creditable in totalizing periods to determine entitlement to a benefit, unless such lump-sum refunds have been paid back to the agency of Korea in accordance with the legislation of Korea.
3. Notwithstanding any other provision of this Agreement, if the total duration of the creditable periods of coverage accumulated by a person under the legislation of Korea is less than one year, the agency of Korea shall not be required to apply Article 13 of this Agreement.



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**PART IV**  
**Provisions relating to Australian Benefits**

**Article 15**  
**Residence or Presence in Korea or a Third State**

Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for an Australian benefit except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged, but:

- (a) is an Australian resident or a resident of Korea or a third State with which Australia has concluded an agreement on social security that includes provision for cooperation in the lodgment, assessment and determination of claims for benefits; and
- (b) is in Australia, or Korea or that third State,

that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purpose of lodging that claim, to be an Australian resident and in Australia on that date.

**Article 16**  
**Totalisation for Australia**

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, under the legislation of Australia for that benefit; and
  - (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4 for that person; and
  - (c) a period of coverage in Korea,

then, for the purposes of a claim for that Australian benefit, that period of coverage in Korea shall be deemed to be a period in which that person was an Australian resident:

- only if that period of coverage in Korea is certified by the agency of Korea at the request of the Australian agency; and

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- only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia.
2. 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 period of coverage in Korea in two or more separate periods that equals or exceeds in total the minimum period referred to in the preceding subparagraph (a);the total of the periods of coverage in Korea shall be deemed to be one continuous period.
  3. For the purposes of this Article, where a period by a person as an Australian resident and a period of coverage in Korea coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.
  4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:
    - (a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least six months must be continuous; and
    - (b) for the purposes of an Australian benefit that is payable to an Australian resident, there shall be no minimum period.

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**Article 17**  
**Calculation of Australian Benefits**

1. Subject to paragraphs 2 and 3, where an Australian benefit is payable 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 legislation of Australia. When assessing the income of that person for the purpose of calculating the rate of that benefit under the legislation of Australia, only a proportion of any benefit under the legislation of Korea paid to that person shall be regarded as income. That proportion shall be calculated by multiplying the number of whole months accumulated by that person in a period of Australian working life residence (not exceeding 300) by the amount of that benefit under the legislation of Korea and dividing that product by 300.
2. A person referred to in paragraph 1 of this Article shall be entitled to receive the assessment of income described in that paragraph only for any period during which the rate of that person's benefit under the legislation of Australia is proportionalised under the legislation of Australia.
3. The provision in paragraph 1 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
4. Subject to paragraph 5, 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 legislation of Australia but disregarding in that calculation any Korean benefit which that person or the partner of that person is entitled to receive if applicable; and
  - (b) deducting the amount of the Korean benefit which that person is entitled to receive 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 legislation of Australia, using as the person's income the amount calculated under subparagraph (a).

5. The provisions in paragraph 4 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
6. Where a member of a couple is, or both that person and his or her partner are, entitled to a Korean benefit or benefits, each of them shall be deemed, for the purposes of this Article and the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

**PART V**  
**Miscellaneous Provisions**

**Article 18**  
**Administrative Arrangement**

1. The Competent Authorities of the Contracting Parties shall conclude an Administrative Arrangement that sets out the measures necessary for the implementation of this Agreement.
2. The liaison agencies of each Contracting Party shall be designated in the Administrative Arrangement.

**Article 19**  
**Exchange of Information and Mutual Assistance**

1. The Competent Authorities and agencies of the Contracting Parties shall, within the scope of their respective authorities:
  - (a) communicate to each other, to the extent permitted by their national laws and regulations, any information necessary for the application of this Agreement;
  - (b) assist each other with regard to the determination of entitlement to, or payment of, any benefit under this Agreement, or the legislation to which this Agreement applies;
  - (c) communicate to each other, as soon as possible, information concerning the measures taken by them for the application of this Agreement and of any changes in their respective legislation which may affect the application of this Agreement;

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- (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 the Administrative Arrangement made in accordance with paragraph 1 of Article 18.
2. The assistance referred to in paragraph 1(b) of this Article shall be provided free of charge, subject to any exceptions to be agreed upon in the Administrative Arrangement concluded pursuant to paragraph 1 of Article 18.

### **Article 20**

#### **Confidentiality of Information**

Unless otherwise required by the national laws and regulations of a Contracting Party, information about an individual which is transmitted in accordance with this Agreement to the Competent Authority or agency of that Contracting Party by the Competent Authority or agency of the other Contracting Party shall be used exclusively for purposes of implementing this Agreement and the legislation to which this Agreement applies. Such information received by a Competent Authority or agency of a Contracting Party shall be governed by the national laws and regulations of that Contracting Party for the protection of privacy and confidentiality of personal data.

### **Article 21**

#### **Exemption from Fees and Certification of Documents**

1. Where the legislation of a Contracting Party provides that any document which is submitted to the Competent Authority or agency of that Contracting Party shall be exempted, wholly or partly, from fees or charges, including consular and administrative fees, the exemption shall also apply to corresponding documents which are submitted to the Competent Authority or agency of the other Contracting Party in the application of this Agreement.
2. Documents and certificates which are presented by the Competent Authority or the agency of either Contracting Party for purposes of this Agreement shall be exempted from requirements for authentication by diplomatic or consular authorities.

3. Copies of documents which are certified as true and exact copies by an agency of one Contracting Party shall be accepted as true and exact copies by an agency of the other Contracting Party, without further certification.

**Article 22**  
**Language of Communications**

1. The Competent Authorities and agencies of the Contracting Parties may correspond directly with each other and with any person, wherever that person may reside, whenever it is necessary to do so for the application of this Agreement or the legislation to which this Agreement applies. The correspondence may be in any official language of either Contracting Party.
2. An application or document may not be rejected by a Competent Authority or agency of a Contracting Party solely because it is in an official language of the other Contracting Party.

**Article 23**  
**Lodgment of Claims, Notices or Appeals**

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of a Contracting Party which should, for the purposes of that legislation, have been lodged within a prescribed period to a Competent Authority or agency of that Contracting Party, but which is lodged within the same period to a Competent Authority or agency of the other Contracting Party, shall be treated as if it had been lodged to the Competent Authority or agency of the first Contracting Party.
2. The date on which a claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Contracting Party is lodged with the Competent Authority or agency of the other Contracting Party shall be treated, for all purposes concerning the matter to which it relates, as the date of lodgment of that document with the Competent Authority or agency of the first Contracting Party.

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3. If, after the entry into force of this Agreement, a person files a written application for benefits with the agency of a Contracting Party under the legislation of that Contracting Party, and if that person has not explicitly requested that the application be restricted to benefits under that legislation, the application shall also protect the rights of that person to corresponding benefits under the legislation of the other Contracting Party, provided that the person at the time of application:
    - (a) is entitled on age grounds to lodge a valid claim for a benefit of the other Contracting Party; and
    - (b) requests that it be considered as an application under the legislation of the other Contracting Party; or
    - (c) provides information indicating that periods of coverage have been completed under the legislation of the other Contracting Party.
  4. In any case to which paragraphs 1, 2 or 3 applies, the Competent Authority or agency to which the claim, notice or appeal has been submitted shall indicate the date of receipt of the document and transmit it without delay to the Competent Authority or agency of the other Contracting Party.
  5. 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, or administratively for the purposes of, the social security laws of Australia.

#### **Article 24** **Currency**

1. The agency of a Contracting Party may pay benefits in accordance with this Agreement in the currency of that Contracting Party.

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2. In the event that a Contracting Party imposes currency controls or other similar measures that restrict payments, remittance or transfers of funds or financial instruments to persons who are outside that Contracting Party, it shall, without delay, take appropriate measures to ensure the payment of any amount that must be paid in accordance with this Agreement to persons described in Article 3 who reside in the other Contracting Party.

**Article 25**  
**Payment of Benefits**

1. This Agreement shall not establish any right to payment of a benefit for any period before the date of the entry into force of this Agreement.
2. In determining the eligibility or entitlement of a person to a benefit by virtue of this Agreement:
- (a) a period as an Australian resident and a period of coverage in Korea; and
  - (b) any event or fact which is relevant to that eligibility or entitlement;
- shall, subject to this Agreement, 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. However, the agency of neither Contracting Party shall be required to take into account periods of coverage or residence which occurred prior to the earliest date for which periods of coverage or residence may be credited under its legislation.
3. The payment outside Australia of an Australian benefit that is payable by virtue of this Agreement shall not be restricted by those provisions of the legislation of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia becoming again an Australian resident, and lodges a claim for an Australian benefit and again leaves Australia within a specified period of time.



**Article 26**  
**Resolution of Disputes**

Any disagreement regarding the interpretation or application of this Agreement shall be resolved by consultation between the Competent Authorities of the Contracting Parties.

**Article 27**  
**Review of Agreement**

Where a Contracting Party requests the other Contracting Party to meet to review this Agreement, the Contracting Parties shall meet for that purpose on a date to be agreed between the Contracting Parties and, unless the Contracting Parties otherwise arrange, their meeting shall be held in the territory of the Contracting Party to which that request was made.

**PART VI**  
**Transitional and Final Provisions**

**Article 28**  
**Transitional Provisions**

1. Determinations concerning entitlement to benefits which were made before the entry into force of this Agreement shall not affect rights arising under it.
2. In applying Article 9 in case of persons who were sent to a Contracting Party prior to the date of entry into force of this Agreement, the periods of employment referred to in that Article shall be considered to begin on that date.
3. The provisions of Parts III and IV shall apply only to benefits for which an application is filed on or after the date this Agreement enters into force.

**Article 29**  
**Entry into Force**

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

**Article 30**  
**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 Contracting Party receives from the other a note through the diplomatic channel giving notice of termination of this Agreement.
2. In the event of termination, this Agreement shall continue to have effect in relation to all persons who:
  - (a) at the date on which termination takes effect, are in receipt of benefits; or
  - (b) prior to that date have lodged claims for, and would be entitled to receive, benefits by virtue of this Agreement; or
  - (c) immediately before the date of termination are subject only to the legislation of one Contracting Party by virtue of Article 9 and paragraph 2 of Article 11 of Part II of the Agreement, provided the employee continues to satisfy the criteria of that Article.

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

DONE in duplicate at Canberra on the sixth day of December TWO THOUSAND AND SIX, in the English and Korean languages, each text being equally authentic.

**FOR THE GOVERNMENT OF  
AUSTRALIA**

**FOR THE GOVERNMENT OF  
THE REPUBLIC OF KOREA**

Alexander Downer  
Minister for Foreign Affairs

Song Min-soon  
Minister for Foreign Affairs

**Schedule 3**      **Amendment commencing on  
the day the Agreement  
between Australia and the  
Hellenic Republic enters into  
force**

(regulation 3)

**[1]**      **After Schedule 19**

*insert in correct numerical position*

**Schedule 22 — Hellenic Republic**

Note: See Section 5.

**AGREEMENT BETWEEN AUSTRALIA AND THE HELLENIC  
REPUBLIC ON SOCIAL SECURITY**

The Government of Australia and the Government of the Hellenic  
Republic (hereinafter “the Parties”),

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

and

Being desirous of regulating the relationship between their two countries  
with respect to social security benefits and coverage,

Have agreed as follows:

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**PART I**  
**GENERAL PROVISIONS**

**Article 1**

**Definitions**

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

**“benefit”** means, in relation to Australia, a benefit, pension or allowance for which provision is made in the legislation of Australia, 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 Australia but, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee; and, in relation to Hellas, the old age pension for which provision is made in the legislation of Hellas, and includes any additional amount, increase or supplements or readjustments that are payable in addition to the amount of the old age pension;

**“Competent Authority”** means, in relation to Australia, the Secretary to the Commonwealth Department responsible for the legislation specified in subparagraph 1(a)(i) of Article 2, except in relation to the application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the Commissioner of Taxation or an authorised representative of the Commissioner; and, in relation to Hellas, the Minister of Hellas, who has the competency of the social security systems referred to in subparagraph 1(b) of Article 2;

**“Competent Institution”** means, in relation to Australia, the institution or agency which has the task of implementing the applicable Australian legislation; and in relation to Hellas, the social security institution which has the task of implementing the applicable Hellenic legislation which is defined in Article 2;

**“legislation”** means, in relation to Australia, the laws specified in subparagraph 1(a)(i) of Article 2 except in relation to the

application of Part II of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the laws specified in subparagraph 1(a)(ii) of Article 2; and, in relation to Hellas the laws which are specified in subparagraph 1(b) of Article 2;

**“period of Australian working life residence”** means, a period defined as such in the legislation of Australia but does not include any period deemed pursuant to Article 11 to be a period in which that person was an Australian resident;

**“period of insurance”** means, in relation to Hellas, each period of paid contributions which gives a right to an entitlement on the basis of Article 2 and each period which is recognized as such, according to this legislation; and, especially for OGA, a period of insurance is also a period of employment in the agricultural sector.

**“territory”** means, in relation to Australia, Australia as defined in the legislation of Australia; and, in relation to Hellas, Hellas as defined in the legislation of Hellas;

2. Unless the context otherwise requires, any term not defined in this Article shall have the meaning assigned to it in the legislation of either contracting 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, consolidate, supplement or replace them:
  - (a) in relation to Australia:
    - (i) the Acts forming the social security law in so far as the law provides for, applies to or affects age pension;

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- (ii) the law concerning the superannuation guarantee (which at the time of signature of this Agreement is contained in the *Superannuation Guarantee (Administration) Act 1992*, the *Superannuation Guarantee Charge Act 1992* and the *Superannuation Guarantee (Administration) Regulations*);
- (b) in relation to Hellas regarding the old age pension:
- i. the general legislation of social insurance covering the employed and the equivalent to them.
  - ii. the legislation provided under the specific systems of social insurance covering all the categories of the employed.
  - iii. the legislation provided under the system of social insurance covering the self employed.
  - iv. the legislation covering the persons, who are insured under the OGA social security system (Organization of Agricultural Insurance).

This Agreement (other than Part II) shall not apply to the specific social security systems covering the civil servants and the merchant marines who are only subject to the provisions of Article 5 of this Agreement.

2. Unless otherwise provided in this Agreement, the legislation referred to in paragraph 1 of this Article shall not include treaties or other international agreements on social security that may be concluded between one contracting Party and a third party.
3. This Agreement shall apply to laws or regulations which extend the existing legislation of either Party to new categories of beneficiaries only if the two Parties so agree in a Protocol to this Agreement.

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### **Article 3**

#### **Personal Scope**

This Agreement shall apply to any person who:

- (a) is or has been an Australian resident; or
  - (b) is or has been subject to the legislation of Hellas,
- and, where applicable, to other persons in regard to the rights they derive from the person described above.

### **Article 4**

#### **Equality of Treatment**

Subject to this Agreement and unless otherwise provided, all persons to whom this Agreement applies shall be treated equally by a Party in regard to rights and obligations regarding eligibility for and payment of benefits which arise whether directly under the legislation of that Party or by virtue of this Agreement.

### **Article 5**

#### **Export of Benefits**

1. Benefits of one Party, when payable by virtue of this Agreement, shall be payable to persons who are residents of, or in, the territory of either Party.
2. In relation to Australia, any additional amount, increase or supplement that is payable in addition to a benefit under this Agreement, shall be payable outside the territory of Australia only according to the provisions of the Acts forming the social security law.
3. In relation to Hellas, any additional amount, increase or supplement that is payable in addition to a benefit under this Agreement, shall be payable outside the territory of Hellas only according to the Hellenic legislation.



**PART II**  
**PROVISIONS CONCERNING THE APPLICABLE**  
**LEGISLATION**

**Article 6**

**Purpose of this Part**

The purpose of this Part is to ensure that employers and employees who are subject to the legislation of Australia or Hellas do not have a double liability under the legislation of Australia and Hellas, in respect of the same work of an employee.

**Article 7**

**Application of this Part**

This Part only applies if an employee and/or the employer of the employee would, apart from this Part, be subject to the legislation of both Parties.

**Article 8**

**Provisions related to the affiliation with**  
**Social Security and Superannuation Guarantee**

1. Unless otherwise provided in this article, an employee working in the territory of one of the contracting Parties will be subject only, in respect of this work, to the legislation of that Party.

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2. If an employee:
- (a) is covered by the legislation of one contracting Party ('the first contracting Party');
  - (b) was sent, whether before, on or after the commencement of this Part, by the Government of the first contracting Party to work in the territory of the other contracting Party ('the second contracting Party');
  - (c) is working in the territory of the second contracting Party in the employment of the Government of the first contracting Party; and
  - (d) is not working permanently in the territory of the second contracting Party;
- the employer of the employee and employee shall be subject only to the legislation of the first contracting Party in respect of the work performed after the entry into force of this Agreement and the remuneration paid for that work. For the purposes of this paragraph, the term "Government" includes in relation to Australia a political subdivision or local authority of Australia.
3. If a self-employed person:
- (a) is working in the territory of one contracting Party, he is subject to the legislation of this Party even if he has his residence in the territory of the other contracting Party.
  - (b) is working as an employee in the territory of one contracting Party and at the same time as a self-employed person in the territory of the other contracting Party, he is subject to the legislation of that Party in whose territory he works as an employee.
4. If an employee:
- (a) is covered by the legislation of one contracting Party ('the first contracting Party');
  - (b) was sent, whether before, on or after the entry into force of this Agreement, by an employer who is subject to the legislation of the first Party to work in the territory of the other contracting Party ('the second contracting Party');

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- (c) is working in the territory of the second contracting Party in the employment of the employer or a related entity of that employer and a period of 4 years from the time the employee was sent to work in the territory of the second contracting Party has not elapsed; and
- (d) the employee is not working permanently in the territory of the second contracting Party;
- the employer of the employee and the employee shall be subject only to the legislation of the first Party in respect of the work performed after the entry into force of this Agreement and the remuneration paid for that work.
5. For the purposes of subparagraph 4(c) a related entity is an entity of an employer if the entity and the employer are members of the same wholly or majority owned group.
6. The competent authorities of both contracting Parties may, after a common agreement, modify the implementation of the provisions of this Article with respect to any person or a category of persons.

## Article 9

### Diplomatic and Consular Relations

This Agreement shall not affect the provisions of the Vienna Convention on Diplomatic Relations of 18 April 1961, or the Vienna Convention on Consular Relations of 24 April 1963.

### **PART III**

#### **PROVISIONS RELATING TO AUSTRALIAN BENEFITS**

##### **Article 10**

###### **Residence or Presence in Hellas**

Where a person would be qualified under the legislation of Australia or by virtue of this Agreement for an Australian benefit except for not being an Australian resident and in Australia on the date on which the claim for that benefit is lodged, but:

- (a) is an Australian resident or a resident of Hellas; and
- (b) is in Australia, or in the territory of Hellas;

that person, so long as he or she has been an Australian resident at some time, shall be deemed, for the purpose of lodging that claim, to be an Australian resident and in Australia on that date.

##### **Article 11**

###### **Totalisation for Australia**

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, under the legislation of Australia for that benefit; and
  - (b) a period of Australian working life residence equal to or greater than the period identified in accordance with paragraph 4 for that person; and
  - (c) a period of insurance under the legislation of Hellas;

then, for the purposes of a claim for that Australian benefit, that period of insurance under the legislation of Hellas shall be deemed to be a period in which that person was an Australian resident, only for the purposes of meeting any minimum

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qualifying periods for that benefit set out in the legislation of Australia.

2. 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 period of insurance under the legislation of Hellas in two or more separate periods that equals or exceeds in total the minimum period referred to in subparagraph (a);

the total of the periods of insurance under the legislation of Hellas shall be deemed to be one continuous period.

3. For the purposes of this Article, where a period by a person as an Australian resident and a period of insurance under the legislation of Hellas coincide, the period of coincidence shall be taken into account once only by Australia as a period as an Australian resident.
4. The minimum period of Australian working life residence to be taken into account for the purposes of paragraph 1 shall be as follows:
  - (a) for the purposes of an Australian benefit that is payable to a person who is not an Australian resident, the minimum period required shall be 12 months, of which at least six months must be continuous; and
  - (b) for the purposes of an Australian benefit that is payable to an Australian resident, there shall be no minimum period.
5. For the purpose of this Article, a period of insurance under the legislation of Hellas shall be deemed as a period as an Australian resident only if that period of insurance under the legislation of Hellas is certified by the Competent Institution of Hellas.

## Article 12

### Calculation of Australian Benefits

1. Subject to paragraphs 2, 3, 4 and 5, where an Australian benefit is payable to a person outside Australia only by virtue of this Agreement, the rate of that benefit shall be determined by:
  - a. calculating that person's income according to the legislation of Australia, including any benefit payable under the legislation of Hellas which that person or the partner of that person is entitled to receive, if applicable;
  - b. applying to the maximum rate of Australian benefit the relevant rate calculator set out in the legislation of Australia, using as the person's income the amount calculated under sub-paragraph (a); and
  - c. proportionalising, if applicable, the amount of benefit calculated under sub-paragraph (b) by multiplying that amount by the person's period of Australian working life residence (up to a maximum of 300 months) over a denominator of 300 months (25 years).
2. Subject to paragraphs 3, 4 and 5, where an Australian benefit is payable to a person outside Australia only by virtue of this Agreement, and the person had ceased to be an Australian resident on the date of entry into force of this Agreement, the rate of that benefit shall be determined by:
  - a. calculating that person's income according to the legislation of Australia, including any benefit payable under the legislation of Hellas which that person or the partner of that person is entitled to receive, if applicable;
  - b. applying to the maximum rate of Australian benefit the relevant rate calculator set out in the legislation of Australia, using as the person's income the amount calculated under sub-paragraph (a); and
  - c. proportionalising, if applicable, the amount of benefit calculated under sub-paragraph (b) by multiplying that amount by the person's period of Australian working life

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residence (up to a maximum of 528 months) over a denominator of 528 months (44 years).

3. Where the rate of an Australian benefit is determined according to paragraph 2 and the person again becomes an Australian resident, the rate of benefit shall continue to be determined according to paragraph 2, subject to paragraph 7 where applicable, if the person subsequently leaves Australia within two years of the date the person again became an Australian resident.
4. The provisions in paragraphs 1, 2, and 5 shall continue to apply for 26 weeks where a person comes temporarily to Australia.
5. Where an Australian benefit is payable to a person outside Australia, whether by virtue of this Agreement or otherwise, the following payments under the legislation of Hellas shall be disregarded when assessing the income of that person:
  - Pensioners' Social Solidarity Benefit (EKAS);
  - Uninsured Aged Person's Pension (OGA);
  - benefits for or in respect of dependent children who satisfy the definition of a dependent child under Australian domestic law, but for residence requirements.
6. Subject to paragraph 7, 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 legislation of Australia but disregarding in that calculation any benefit under the legislation of Hellas which that person or the partner of that person is entitled to receive if applicable; and
  - (b) deducting the amount of the benefit under the legislation of Hellas which that person is entitled to receive 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 legislation of Australia, using as the person's income the amount calculated under subparagraph (a).
7. Paragraph 6 shall continue to apply for 26 weeks where a person departs temporarily from Australia.
8. Where a member of a couple is, or both that person and his or her partner are, entitled to a benefit or benefits under the legislation of Hellas each of them shall be deemed, for the purposes of this

Article and of the legislation of Australia, to be in receipt of one half of either the amount of that benefit or the total of both of those benefits, as the case may be.

**PART IV**  
**PROVISIONS RELATED TO BENEFITS UNDER THE**  
**HELLENIC LEGISLATION**

**Article 13**

**Totalisation of insurance periods, residence and calculation of benefits**

1. If a person is entitled to an Hellenic benefit without recourse to the provisions of paragraph 2 and 3 of this Article the amount of the benefit is determined according to the Hellenic legislation on the basis of insurance periods completed under this legislation.
2. Where no entitlement to Hellenic benefit exists on the basis of Hellenic insurance periods, the periods of residence completed under Australian legislation shall be totalized for the acquisition of the rights to old age pension under the Hellenic legislation, provided that these periods do not overlap.
3. Where periods of residence completed under Australian legislation are taken into account for the acquisition of the right according to the previous paragraph the benefit payable under the Hellenic legislation is determined as follows:
  - a. The competent Institution first calculates the amount of the benefit which would have been awarded to the person concerned if the periods completed under Australian legislation and totalized according to the previous paragraph had been completed under its own legislation for the acquisition of the right to old age pension.
  - b. The competent Institution in determining the amount of the benefit takes into consideration the salary (earnings), income or contributions which have been paid during the period completed under the Hellenic legislation.



- c. where the amount determined as above is less than the minimum benefit provided by the Hellenic legislation then the minimum amount shall substitute the amount determined as above.
4. On the basis of the amount calculated according to the previous paragraph the competent institution determines the amount of the partial benefit payable by it, according to ratio between the length of the periods of insurance completed under its own legislation and the total duration of the periods of insurance and residence which have been taken into account.
5. If the total length of the periods of insurance which shall be taken into account in accordance with Hellenic legislation for the calculation of the benefit does not attain 300 days (12 months) and provided that no entitlement to a benefit according to the Hellenic legislation exists without applying the previous paragraphs no benefit shall be paid out according to this legislation.
6. Only Hellenic insurance periods are taken into account when establishing the kind of benefit and the competent institution.
7. For the purposes of this Article
  - (a) one (1) month of residence in Australia is equivalent to 25 days of insurance in Hellas and
  - (b) one (1) year of residence in Australia is equivalent to 300 days of insurance in Hellas.
8. For the purpose of this Article, a period of residence in Australia shall be deemed as a period of insurance in Hellas only if that period of residence under the legislation of Australia is certified by the Competent Institution of Australia.

## **PART V**

### **MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS**

#### **Article 14**

##### **Lodgement of Documents**

1. A claim, notice or appeal concerning a benefit, whether payable by virtue of this Agreement or otherwise, may be lodged in the

- territory of either Party in accordance with the Administrative Arrangement made pursuant to Article 18 at any time after the Agreement enters into force.
2. For the purposes of determining the right to a benefit, the date on which a claim, notice or appeal referred to in paragraph 1 is lodged with the Competent Institution of one Party shall be considered as the date of lodgement of that document with the Competent Institution of the other Party. The Competent Institution with which a claim, notice or appeal is lodged shall refer it without delay and, in any case, within 12 months to the Competent Institution of the other Party.
  3. A claim for a benefit from one Party shall be considered as a claim for the corresponding benefit from the other Party so long as the claimant has indicated in that claim that there is, or there was, an affiliation with the social security system of that other Party and provided the other Party receives this request within 12 months.
  4. 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, or administratively for the purposes of, the respective legislation.

## **Article 15**

### **Payment of Benefits**

1. The commencement 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 in no case shall that date be a date earlier than the date on which this Agreement enters into force.
2. If a Party imposes legal or administrative restrictions on the transfer of currency outside of its territory, that Party shall implement measures as soon as practicable to guarantee the rights to payment and delivery of benefits payable under the legislation of that Party or by virtue of this Agreement. The measures shall operate retrospectively to the time when the restrictions were imposed.

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3. While the measures in paragraph 2 are being implemented, the Party not imposing the restrictions set out in paragraph 2 may impose restrictions on the payment of its benefits paid under the Agreement in the territory of the other Party, until the other Party has lifted all such restrictions. On the lifting of the restrictions by the other Party and the payment of arrears by that other Party then the first Party shall also pay arrears of its benefits in relation to the entire time during which the first Party's restrictions were imposed.
  4. Where a Party has imposed legal or administrative restrictions on the transfer of its currency outside of its territory as mentioned in paragraph 2, it shall inform the other Party of those restrictions within one calendar month of their imposition and shall implement the measures described in that paragraph within 3 months of the imposition of the restrictions. A failure to comply with either requirement may be treated by the other Party as a material breach of the Agreement for the purposes of Article 60 of the Vienna Convention on the Law of Treaties of 23 May 1969.
  5. A benefit payable by a Party by virtue of this Agreement shall be paid by that Party, whether the beneficiary is in the territory of that Party or the other Party, without deduction for government administrative fees and charges for processing and paying that benefit.
  6. Any exemption granted in the territory of one of the Parties from stamp duty, notarial or registration fees in respect of certificates and documents required to be submitted to the Competent Authorities and Competent Institutions in the same territory, shall also apply to certificates and documents which, for the purposes of this Agreement, have to be submitted to the Competent Authorities and Competent Institutions in the territory of the other Party. Documents and certificates required to be produced for the purpose of this Agreement shall be exempt from authentication by diplomatic and consular authorities.

## Article 16

### Recovery of overpayments

1. Where:
  - (a) an amount of arrears of benefit is paid or payable by a Party; and
  - (b) for all or part of that period, the other Party has paid to that person a benefit under its legislation; and
  - (c) the amount of the benefit paid by the other party would have been reduced had the benefit paid or payable by the first Party been paid during that period;
  - (d) then the amount that would not have been paid by the other Party had the benefit described in subparagraph (a) been paid on a periodical basis throughout that past period, shall be a debt due by that person to the other Party and may be recovered by that Party.
2. Where the first Party has not yet paid the arrears of benefit described in subparagraph 1(a) to the person, that Party shall, at the request of the other Party, pay the amount of the benefit necessary to meet the debt described in subparagraph 1(d) to the other Party and shall pay any remainder to the person.
3. The Competent Institution receiving a request under paragraph 2 shall transfer the amount of the debt to the Competent Institution making the request.

## Article 17

### Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement shall to the extent permitted by their national laws:
  - (a) communicate to each other any information necessary for the application of this Agreement or for the purposes of their social security laws;
  - (b) lend their good offices and furnish assistance to one another (including the communication to each other of any information necessary) with regard to the determination or payment of any benefit under this Agreement or under the legislation to which this Agreement applies as if the matter

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- involved the application of their own legislation;
- (c) 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 insofar as these changes affect the application of this Agreement; 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 the Administrative Arrangement made in accordance with Article 18.
2. The assistance referred to in paragraph 1 shall be provided free of charge, subject to any arrangement reached between the Competent Authorities and Competent Institutions for the reimbursement of certain types of expenses that are specified in the Administrative Arrangement made in accordance with Article 18.
3. Unless disclosure is required under the legislation of a Party, any information about an individual which is transmitted in accordance with this Agreement to a Competent Authority or a 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 legislation to which this Agreement applies.
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 administration of that or the other Party.
5. Notwithstanding any laws or administrative practices of a Party, no information concerning a person which is received by that Party from the other Party shall be transferred or disclosed to any other country or to any organisation within that other country without the prior written consent of that other Party.

6. In the application of this Agreement, the Competent Authority and the Competent Institution of a Party may communicate with the other in any of the official languages of the Parties.

### **Article 18**

#### **Administrative Arrangement**

1. The Competent Authorities of the Parties shall establish, by means of an Administrative Arrangement, the measures necessary for the implementation of this Agreement.
2. The Competent Authorities shall appoint liaison bodies which are to be listed in the Administrative Arrangement.

### **Article 19**

#### **Resolution of Disputes**

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 Party concerning matters which have not been resolved by the Competent Authorities in accordance with paragraph 1.

### **Article 20**

#### **Review of Agreement**

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

**PART VI**  
**TRANSITIONAL AND FINAL PROVISIONS**

**Article 21**

**Transitional Provisions**

1. In determining entitlement to a benefit under this Agreement, periods as an Australian resident, periods of Australian working life residence and periods of insurance under the legislation of Hellas completed before the entry into force of this Agreement shall also be taken into consideration.
2. Where, on the date on which this Agreement enters into force, a person is in receipt of a benefit under the legislation of either Party, no provision of this Agreement shall affect that person's qualification to receive that benefit.

**Article 22**

**Entry into Force**

This Agreement shall enter into force on the first day of the second month following the final day of 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 Agreement have been finalised.

**Article 23**

**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 a note through the diplomatic channel giving notice of termination of this Agreement.

2. In the event of termination, this Agreement shall continue to have effect in relation to all persons who:
- (a) at the date on which termination takes effect, are in receipt of benefits;
  - (b) prior to that date have lodged claims for, and would be entitled to receive, benefits by virtue of this Agreement; or
  - (c) immediately before the date of termination are subject only to the legislation of one Party by virtue of Article 8 of Part II of the Agreement, provided the employee continues to satisfy the criteria of that Article.

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

DONE in two originals at Canberra this twenty-third day of May two thousand and seven in the English and Greek languages, each text being equally authoritative.

FOR THE GOVERNMENT OF  
AUSTRALIA:

FOR THE GOVERNMENT OF THE  
HELLENIC REPUBLIC:

.....  
Mal Brough  
Minister for Families, Community  
Services and Indigenous Affairs

.....  
Theodora Bakoyannis  
Minister of Foreign Affairs