

No. 27463

**AUSTRALIA
and
CANADA**

**Reciprocal Agreement on social security. Signed at Canberra
on 4 July 1988**

Authentic texts: English and French.

Registered by Australia on 30 July 1990.

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et
CANADA**

**Accord réciproque de sécurité sociale. Signé à Canberra le
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Textes authentiques : anglais et français.

Enregistré par l'Australie le 30 juillet 1990.

RECIPROCAL AGREEMENT¹ ON SOCIAL SECURITY BETWEEN
THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF CANADA

The Government of Australia and the Government of Canada,

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

Resolved to co-operate in the field of social security,

Have agreed as follows:

PART I
INTERPRETATION AND SCOPE

ARTICLE 1
Interpretation

1. In this Agreement:

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

"Canadian creditable period" means a period, or the total of two or more periods, of residence or

¹ Came into force on 1 September 1989, the date specified in an exchange of notes of 14 and 21 August 1989 by which the Parties informed each other that all necessary matters had been finalized, in accordance with article 22 (1).

contributions which has been or can be used to acquire the right to a Canadian benefit, but does not include any period considered under paragraph 2 of Article 10 as a Canadian creditable period;

"**carer's pension**" means a carer's pension payable to a spouse under the legislation of Australia;

"**competent authority**" means, in relation to Australia, the Secretary to the Department of Social Security and, in relation to Canada, the Minister of National Health and Welfare;

"**Government of Canada**" means the Government in its capacity as representative of her Majesty the Queen in right of Canada and represented by the Minister of National Health and Welfare;

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

"**period of residence in Australia**", in relation to a person, means a period defined as such in the social security laws of Australia, but does not include any period deemed pursuant to Article 6 to be a period in which that person was an Australian resident;

"**social security laws**" means:

- (i) in relation to Australia, the Social Security Act 1947 as amended, not including amendments effected by laws made for the purpose of giving effect to an agreement on social security; and
- (ii) in relation to Canada, the laws specified in subparagraph 1(b) of Article 2;

"widow" means, in relation to Australia:

- (i) a de jure widow; or
- (ii) a woman who, for not less than 3 years immediately prior to the death of a man, lived with him on a permanent basis as his de facto spouse and was wholly or mainly maintained by him,

but does not include a woman who is the de facto spouse of a man.

2. In the application by a Party of this Agreement to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the social security laws of either Party or, in the event of a conflict of meaning, by whichever of those laws is the more applicable to the circumstances of that person.

ARTICLE 2

Legislative Scope

1. Subject to paragraphs 2 and 3, this Agreement shall apply to the following laws, as amended at the date of signature of this Agreement, and to any laws that subsequently amend, supplement or replace them:

- (a) in relation to Australia, the Social Security Act 1947 to the extent that the Act provides for and applies to:
 - (i) age pensions;
 - (ii) invalid pensions;
 - (iii) wives' pensions;
 - (iv) carers' pensions; and
 - (v) pensions payable to widows; and

- (b) in relation to Canada:
- (i) the Old Age Security Act and the regulations made thereunder; and
 - (ii) the Canada Pension Plan and the regulations made thereunder.

2. In relation to Australia, the legislation to which this Agreement applies shall not include any laws made, whether before or after the date of signature of this Agreement, for the purpose of giving effect to any agreement on social security.

3. This Agreement shall apply to laws of a Party which extend the existing legislation of that Party to new categories of beneficiaries unless the competent authority of that Party communicates in writing an objection in regard to those laws to the competent authority of the other Party prior to the commencement of those laws.

ARTICLE 3 Personal Scope

This Agreement shall apply to any person who:

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

and, where applicable, to any spouse, dependant or survivor of such a person.

ARTICLE 4
Equality of Treatment

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

PART II
PROVISIONS RELATING TO AUSTRALIAN BENEFITS

ARTICLE 5
Residence or Presence in Canada or a Third State

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

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

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

2. Paragraph 1 shall not apply to a claimant for a wife's pension or carer's pension who has never been an Australian resident.

ARTICLE 6

Totalisation in relation to Australian Benefits

1. Where a person has been an Australian resident for a period that is:

- (a) less than the period as an Australian resident required to qualify him or her under the legislation of Australia for a benefit; and
- (b) equal to or greater than the minimum period identified in accordance with paragraph 6 for that person,

but has accumulated both a period of residence in Australia and a Canadian creditable period which, when added together, are equal to or greater than the minimum period required for qualification for that benefit by the legislation of Australia, that Canadian creditable period shall be deemed, for the purposes of a claim for that benefit, to be a period in which that person was an Australian resident.

2. In the case of a claim by a person for an invalid pension or pension payable to a widow, paragraph 1 shall apply only to a Canadian creditable period accumulated by that person under the Canada Pension Plan.

3. For the purposes of a claim by a person for a pension payable to a widow, that person shall, subject to

Article 9, be deemed to have accumulated a Canadian creditable period for any period for which her spouse accumulated a creditable period under the Canada Pension Plan but any period during which the person and her spouse both accumulated Canadian creditable periods under the Canada Pension Plan shall be taken into account once only.

4. For the purposes of paragraph 1, where a person:
- (a) has been an Australian resident for a continuous period which is less than the minimum continuous period required by the legislation of Australia for entitlement of that person to a benefit; and
 - (b) has accumulated a Canadian creditable period in two or more separate periods that exceed in total the minimum period referred to in subparagraph (a),

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

5. For the purposes of this Article:
- (a) where a period of residence in Australia and a Canadian creditable period coincide, the period of coincidence shall be taken into account once only as a period in which that person was an Australian resident; and
 - (b) a Canadian creditable period accumulated under the Old Age Security Act which coincides with a Canadian creditable period accumulated under the Canada Pension Plan shall be taken into account once only.

6. The minimum period of residence in Australia which a person must have accumulated before paragraph 1 applies shall be as follows:

- (a) for an Australian benefit other than an invalid pension, the minimum period required shall be one year of which at least 6 months must be continuous; and
- (b) for an invalid pension, the minimum period required shall be 2 years of which at least 6 months must be continuous.

ARTICLE 7

Australian Pro-Rata Benefits

1. Where an Australian benefit is payable whether by virtue of this Agreement or otherwise to a person who is outside Australia, the rate of that benefit shall be determined according to the social security laws of Australia but:

- (a) disregarding in the computation of his or her income the guaranteed income supplement under the Old Age Security Act and the portion of the spouse's allowance under that Act equivalent to the guaranteed income supplement and other Canadian federal, provincial or territorial payments of a similar character as mutually determined from time to time in letters exchanged between the Ministers respectively administering the legislation of Australia and Canada; and
- (b) by assessing as income to that person only a proportion of any other benefit received by that person under the legislation of Canada calculated

by multiplying the number of whole months, plus one, accumulated by that person in a period of residence in Australia, but not exceeding 300, by the amount of that benefit and dividing that product by 300.

2. 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 according to the legislation of Australia but, subject to paragraph 5, disregarding in the computation of his or her income any Canadian benefit which that person is entitled to receive, and deducting the amount of that Canadian benefit from the rate of Australian benefit which would otherwise be payable to that person.

3. Where the rate of a benefit calculated in accordance with paragraph 2 is less than the rate of that benefit which would be payable under paragraph 1 if the person concerned were outside Australia, the first-mentioned rate shall be increased to an amount equivalent to the second-mentioned rate.

4. For the purposes of paragraph 3, a comparison of the rates of a benefit determined in accordance with paragraphs 1 and 2 shall be made as at:

- (a) the date of the first pension pay-day occurring after the date on which the claim for the benefit was lodged; and
- (b) each anniversary of that pension pay-day for so long as the person concerned is entitled to the benefit, using, in that comparison, the number of months in the period of residence in Australia

accumulated by the person at the date as at which the comparison is made.

5. For the purposes of paragraph 2, where one or other, or both, of a person and his or her spouse are entitled to receive a Canadian benefit, the total of the Canadian benefits payable to that person and his or her spouse shall be apportioned equally between them and disregarded in the computation of their respective incomes, and the amount so apportioned shall be deducted from the amount of Australian benefit that would otherwise be payable to each of them.

6. An Australian benefit that is payable only by virtue of this Agreement to a person who:

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

shall be paid, during any absence of that person from Australia that commences before 1 January 1996, at a rate calculated in accordance with paragraphs 2 and 3.

7. As soon as practicable after an exchange of letters in which Canadian federal, provincial or territorial payments are mutually determined for the purposes of subparagraph 1(a), the Minister administering the legislation of Australia shall cause to be published in the Commonwealth of Australia Gazette a notice specifying those Canadian payments.

ARTICLE 8Wives' Pensions and Carers' Pensions

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

ARTICLE 9Pensions Payable to Widows

Where, under the legislation of Australia, a widow lodges a claim for a pension payable to a widow, matters which concern her former spouse and affect that claim shall be considered for the purposes of that claim by reference only to her last-deceased spouse who was her husband or was a man in respect of whom she satisfies the conditions specified in subparagraph (ii) of the definition of "widow" in Article 1.

PART IIIPROVISIONS RELATING TO CANADIAN BENEFITSARTICLE 10Totalising of Periods for
Purposes of the Legislation of Canada

1. Subject to paragraph 3, if a person is not entitled to a benefit on the basis of his or her Canadian creditable periods, eligibility for that benefit shall be determined by totalising these periods and those specified in paragraph 2.

2. (a) For the purposes of determining eligibility for a benefit under the Old Age Security Act, a period of residence in Australia shall be considered as a period of residence in Canada.
 - (b) For the purposes of determining eligibility for a benefit under the Canada Pension Plan, a calendar year which includes a period of residence in Australia of at least 6 calendar months shall be considered as a year for which contributions have been made under the Canada Pension Plan.
3. For the purposes of this Article, where a Canadian creditable period and a period of residence in Australia coincide, the period of coincidence shall be taken into account once only as a Canadian creditable period.

ARTICLE 11

Benefits under the Old Age Security Act

1. (a) If a person is entitled to payment of a pension in Canada under the Old Age Security Act without recourse to the provisions of this Agreement, but has not accumulated sufficient periods of residence in Canada to qualify for payment of the pension abroad under that Act, a partial pension shall be paid to that person outside Canada if the Canadian creditable period accumulated under the Old Age Security Act and period of residence in Australia, when totalised as provided in Article 10, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for payment of a pension abroad.

- (b) The amount of the pension payable shall, in this case, be calculated under the provisions of the Old Age Security Act governing the payment of a partial pension, exclusively on the basis of the periods creditable under that Act.
2. (a) If a person is not entitled to a pension or spouse's allowance under the Old Age Security Act solely on the basis of periods of residence in Canada, a partial pension or a spouse's allowance shall be paid to that person if the Canadian creditable period accumulated under that Act and period of residence in Australia, when totalised as provided in Article 10, are at least equal to the minimum period of residence in Canada required by the Old Age Security Act for payment of a pension or a spouse's allowance.
- (b) The amount of the pension or the spouse's allowance payable shall, in this case, be calculated under the provisions of the Old Age Security Act governing the payment of a partial pension or a spouse's allowance, exclusively on the basis of the periods creditable under that Act.
3. Notwithstanding any other provision of this Agreement:
- (a) the competent authority of Canada shall not pay a pension under the Old Age Security Act to a person outside Canada unless his or her Canadian creditable period accumulated under that Act and period of residence in Australia, when totalised as provided in Article 10, are at least equal to the minimum period of residence in Canada

- required by the Old Age Security Act for payment of a pension abroad;
- (b) a spouse's allowance shall not be payable by virtue of this Agreement to a person who has not accumulated a Canadian creditable period of at least one year under the Old Age Security Act; and
- (c) a spouse's allowance and a guaranteed income supplement shall be paid outside Canada only to the extent permitted by the Old Age Security Act.

ARTICLE 12

Benefits under the Canada Pension Plan

1. If a person is not entitled to a disability pension, disabled contributor's child's benefit, survivor's pension, orphan's pension or death benefit solely on the basis of the periods creditable under the Canada Pension Plan, but is entitled to that benefit through the totalising of periods as provided in Article 10, the competent authority of Canada shall calculate the amount of the earnings-related portion of such benefit under the provisions of the Canada Pension Plan, exclusively on the basis of the pensionable earnings under the Canada Pension Plan.

2. The amount of the flat-rate portion of the benefit payable by virtue of this Agreement shall, in a case referred to in paragraph 1, be determined by multiplying:

- (a) the amount of the flat-rate portion of the benefit determined under the Canada Pension Plan

by

- (b) the fraction which represents the ratio of the periods of contributions to the Canada Pension Plan in relation to the minimum qualifying period required under the Canada Pension Plan for entitlement to that benefit,

but in no case shall that fraction exceed the value of one.

PART IV

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

ARTICLE 13

Lodgement of Documents

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

ARTICLE 14

Determination of Claims

1. 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 Canadian creditable period; and
- (b) any event which is relevant to that eligibility or entitlement

shall, subject to this Agreement, be taken into account to the extent that those periods or those events are applicable in regard to that person and whether they were accumulated or occurred before or after the date on which this Agreement enters into force.

2. No provision of this Agreement shall confer any right to receive payment of a benefit for a period before the date of entry into force of this Agreement.

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

4. Where:

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

then

- (d) the amount that would not have been paid by the competent authority of Australia had the Canadian benefit been paid on a periodical basis from the date to which the arrears of benefit referred to in subparagraph (a) were paid shall be a debt due by that person to Australia; and
- (e) the competent authority of Australia may determine that the amount, or any part, of that debt may be deducted from future payments of a benefit to that person.

5. In paragraph 4, "benefit" means, in relation to Australia, a pension, benefit or allowance that is payable under the social security laws of Australia.

ARTICLE 15

Payment of Benefits

1. The payment outside Australia of an Australian benefit payable by virtue of this Agreement shall not be restricted by those provisions of the social security laws of Australia which prohibit the payment of a benefit to a former Australian resident who returns to Australia and lodges a claim for an Australian benefit and leaves Australia within 12 months of the date of that return.

2. A carer's pension as defined in this Agreement, whether payable by virtue of this Agreement or otherwise, shall be paid within Australia and Canada.

3. A benefit payable by virtue of this Agreement shall be paid without deduction for administrative fees and charges.

ARTICLE 16Exchange of Information and Mutual Assistance

1. The competent authorities shall:
 - (a) notify each other of laws that amend, supplement or replace the social security laws of their respective Parties promptly after the first-mentioned laws are made;
 - (b) communicate to each other any information necessary for the application of this Agreement or of the respective social security laws of the Parties concerning all matters arising under this Agreement or under those laws;
 - (c) lend their good offices and furnish assistance to one another with regard to the determination or payment of any benefit under this Agreement or any other entitlement under the respective social security laws as if the matter involved the application of their own laws; and
 - (d) at the request of one to the other, assist each other in relation to the implementation of agreements on social security entered into by either of the Parties with third States, to the extent and in the circumstances specified in administrative arrangements made in accordance with Article 17.

2. 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.

3. Any information about a person which is transmitted in accordance with this Agreement to a

competent authority shall be protected in the same manner as information obtained under the social security laws of that Party and shall be disclosed only in the manner permitted by the laws of that Party.

4. In no case shall the provisions of paragraphs 1 and 3 be construed so as to impose on the competent authority of a Party the obligation:

- (a) to carry out administrative measures at variance with the laws or the administrative practice of that or the other Party; or
- (b) to supply particulars which are not obtainable under the laws or in the normal course of the administrative practice of that or the other Party.

ARTICLE 17

Administrative Arrangements

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

ARTICLE 18

Language of Communication

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

ARTICLE 19Understandings with a Province of Canada

The relevant authority of Australia and a province of Canada may conclude understandings concerning any social security matter within provincial jurisdiction in Canada provided that those understandings are not inconsistent with the provisions of this Agreement.

ARTICLE 20Resolution of Difficulties

1. The competent authorities of the Parties shall resolve, to the extent possible, any difficulties which arise in interpreting or applying this Agreement according to its spirit and fundamental principles.

2. The Parties shall consult promptly at the request of either concerning matters which have not been resolved by the competent authorities in accordance with paragraph 1.

3. Any dispute between the Parties concerning the interpretation of this Agreement which has not been resolved or settled by consultation in accordance with paragraph 1 or 2 shall, at the request of either Party, be submitted to arbitration.

4. Unless the Parties mutually determine otherwise, the arbitral tribunal shall consist of three arbitrators, of whom each Party shall appoint one and the two arbitrators so appointed shall appoint a third who shall act as president; provided that if the two arbitrators

fail to agree, the President of the International Court of Justice shall be requested to appoint the president.

5. The arbitrators shall determine their own procedures.

6. The decision of the arbitrators shall be final and binding.

ARTICLE 21

Review of Agreement

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

PART V

FINAL PROVISIONS

ARTICLE 22

Entry into Force and Termination

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

2. Subject to paragraph 3, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives from the other written notice through the diplomatic channel of the intention of the other Party to terminate this Agreement.

3. In the event that this Agreement is terminated in accordance with paragraph 2, the Agreement shall continue to have effect in relation to all persons who by virtue of this Agreement:

- (a) at the date of termination, are in receipt of benefits; or
- (b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits.

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

DONE in two copies at Canberra this 4th day of July 1988 in the English and French languages, each text being equally authoritative.

For the Government
of Australia:

[Signed]¹

For the Government
of Canada:

[Signed]²

¹ Signed by Ben Humphreys.

² Signed by Don Mazankowski.