

TRACTATENBLAD

VAN HET

KONINKRIJK DER NEDERLANDEN

JAARGANG 2001 Nr. 125

A. TITEL

*Verdrag tussen het Koninkrijk der Nederlanden en Australië inzake
sociale zekerheid, met Administratief Akkoord
's-Gravenhage, 2 juli 2001*

B. TEKST

**Agreement between the Government of the Kingdom of the
Netherlands and the Government of Australia on Social Security**

The Government of the Kingdom of the Netherlands

and

the Government of Australia,

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

Resolved to continue the cooperation in the field of social security,
and

Wishing to extend and modify the Agreement between the Kingdom
of the Netherlands and Australia on Social Security of 4 January 1991
(the 1991 Agreement);

Have agreed as follows:

PART I

GENERAL PROVISIONS

Article 1

Definitions

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

“benefit” means in relation to a Party, a benefit, pension or allowance for which provision is made in the legislation of that Party, and includes any additional amount, increase or supplement for which a beneficiary is qualified under the legislation of that Party but, for Australia, does not include any benefit, payment or entitlement under the law concerning the superannuation guarantee and, for the Netherlands, does not include any benefit, payment or entitlement under the Social Security Supplementary Benefits Act (TW);

“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, Section A 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 the Netherlands: the Minister for Social Affairs and Employment;

“Competent Institution” means, in relation to Australia: the institution which has the task of implementing the applicable Australian legislation and in relation to the Netherlands: the institution which is charged with the implementation of the legislation of the Netherlands specified in Article 2 and which is competent under that legislation;

“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, Section A of the Agreement (including the application of other Parts of the Agreement as they affect the application of that Part) where it means the law specified in subparagraph 1(a)(ii) of Article 2, and, in relation to the Netherlands, the laws, ordinances and administrative regulations relating to the systems and branches of social security specified in subparagraph 1(b) of Article 2 in relation to the Netherlands;

“period of insurance” means a period defined as such in the legislation of the Netherlands;

“period of Australian working life residence”, in relation to a person, means a period defined as such in the legislation of Australia, but does not include any period deemed pursuant to Article 10 to be a period in which that person was an Australian resident;

“territory”, means, in relation to Australia, the Commonwealth of Australia, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island, and, in relation to the Kingdom of the Netherlands, the territory of the Kingdom in Europe; and

“widowed person”, means in relation to Australia, a de jure widow or widower but does not include one who has a partner;

2. In the application by a Party of this Agreement in relation to a person, any term not defined in this Article shall, unless the context otherwise requires, have the meaning assigned to it in the legislation of either Party.

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 the following benefits:
 - A) age pensions;
 - B) disability support pension for a person who is severely disabled; and
 - (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 the Netherlands, its legislation on:
 - (i) general old age insurance;
 - (ii) invalidity insurance for employees and the self-employed;
 - (iii) general survivors' insurance;
 - (iv) children's allowances;
 - (v) sickness insurance (including employers' liability for payment during sickness);
and for the application of Part II of the Agreement also its legislation on;
 - (vi) unemployment insurance;

2. Notwithstanding the provisions of subparagraph 1(a), this Agreement shall continue to apply to women who are receiving Australian wife pension and are the wives of persons receiving Australian age pension and it shall also apply to women who are receiving Australian wife pension and are the wives of persons receiving Australian disability support pension for the severely disabled.

3. Notwithstanding the provisions of subparagraph 1(a), the term "benefit" shall include Australian pensions payable to widowed persons and Australian double orphans pensions for the purposes of Article 5.

4. Notwithstanding the provisions of subparagraph 1(a) of this Article, the term "benefit" shall, when the reference is to an Australian benefit, include pensions payable to widowed persons for the purposes of paragraphs 1 and 2 of Article 15.

5. Notwithstanding the provisions of subparagraph 1(a) the legislation of Australia 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 entered into by Australia with other States.

6. This Agreement shall apply to laws that extend the legislation of either Party to new categories of beneficiaries or to new branches or systems of social security only if the two Parties so agree in a Protocol to this Agreement.

7. Except as otherwise provided in this Agreement, this Agreement shall not apply to social and medical assistance schemes, to special schemes for civil servants or persons treated as such, or to benefit schemes for victims of war or its consequences.

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

Article 3

Personal Scope

Subject to other Articles of this Agreement, it 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 the Netherlands,
- and, where applicable, to other persons in regard to the rights they derive from a person described above.

Article 4

Equality of Treatment

1. The citizens of each of the Parties shall be treated equally in the application of the legislation of Australia and of the Netherlands relating to benefits.

2. 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 relating to benefits which arise by virtue of this Agreement.

Article 5

Payment of benefits abroad

1. Benefits payable whether under this Agreement or otherwise shall not be reduced, modified, suspended or withdrawn on account of the recipient, or members of his or her family, residing in the territory of the other Party.

2. Where continuing qualification or payability of a benefit is subject to limitations as to time, then reference to the territory of a Party in those limitations shall be read also as reference to the territory of the other Party.

3. Where continuing qualification or payability of a benefit is subject to a requirement to be, for an Australian benefit, an Australian resident or, for a Netherlands benefit, a resident of the Netherlands and/or also to be present in Australia or the Netherlands respectively, then in regard to those requirements, a reference to an Australian resident shall be read also as a reference to a resident of the Netherlands and vice versa and a reference to being present in Australia shall be read also as being present in the Netherlands and vice versa.

4. Where a double orphan pension would be payable to a person under the legislation 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 that legislation, be payable while that person and that young person are residents of the Netherlands.

PART II

PROVISIONS ON COVERAGE

SECTION A

Provisions relating to the superannuation guarantee legislation of Australia and to Netherlands' legislation

Article 6

Purpose of Section A

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

Article 7

Application of Section A

Section A only applies where:

- a) without the application of Section A an employee and/or the employer of the employee would otherwise be covered by both the legislation of the Netherlands and Australia; or
- b) without the application of paragraphs 2, 3, 5 or 6 of Article 8 an employee from the Netherlands and/or the employer of that employee

would otherwise come to be covered by the legislation of Australia and not remain covered by the legislation of the Netherlands.

Article 8

Provisions on coverage

1. Unless otherwise provided in paragraphs 2, 3 or 4, if an employee works in the territory of one Party, the employer of the employee and the employee shall in respect of the work and the remuneration paid for the work be subject only to the legislation of that Party.

2. If an employee:

- a) is covered by the legislation of one Party ('the first Party'); and
 - b) was sent, whether before, on or after the commencement of this Part, by the Government of the first Party to work in the territory of the other Party ('the second Party'); and
 - c) is working in the territory of the second Party in the employment of the Government of the first Party; and
 - d) is not working permanently in the territory of the second Party;
- the employer and employee shall be subject only to the legislation of the first Party in respect of the work and the remuneration paid for the work.

3. If an employee:

- a) is covered by the legislation of one Party ('the first Party'); and
 - b) was sent, whether before, on or after the commencement of this Part, by an employer who is subject to the legislation of the first Party to work in the territory of the other Party ('the second Party'); and
 - c) is working in the territory of the second Party in the employment of the employer or a related entity of that employer; and
 - d) was sent to work in the territory of the second Party and a period of 5 years has not elapsed from that time; and
 - e) is not working permanently in the territory of the second Party;
- the employer and employee shall be subject only to the legislation of the first Party in respect of the work and the remuneration paid for the work. 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.

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

5. For the purposes of the Netherlands' legislation, a person who is subject to the Netherlands' legislation in accordance with the provisions of this Article shall be considered to be resident in the territory of the Kingdom of the Netherlands.

6. According to the provisions of this Article the Netherlands' legislation shall be applicable if the employer or employee has applied for a

certificate of coverage from the Netherlands' authority within three months after the first day of secondment under paragraphs 2 or 3 and this certificate has been issued to the person concerned.

Article 9

Exception agreements

1. The competent authority for Australia and the competent institution for the Netherlands may for the purposes of Section A by agreement in writing:

a) extend the period of 5 years referred to in subparagraph 3(d) of Article 8 for any employee; or

b) agree that an employee is taken to work in the territory of a particular Party or to work on a ship or aircraft in international traffic under the legislation of a particular Party and is subject only to the legislation of that Party.

2. Any agreement made under paragraph 1 may apply to:

a) a class of employees; and/or

b) particular work or particular type of work (including work that has not occurred at the time the agreement is made).

SECTION B

Provisions relating to Australian legislation (other than that relating to the superannuation guarantee) and to Netherlands' legislation

Article 10

Partner or Children of Seconded Employees Temporary Absence from Australia

An Australian resident, who is the partner or child of, and who accompanies to the Netherlands, an employee to which Article 8 paragraph 2 or 3 applies, shall not cease to be regarded as an Australian resident because he or she is temporarily in the Netherlands during the whole or part of the time during which that paragraph applies to that employee.

Article 11

Application of Netherlands Legislation to the Partner or Children of Seconded Employees

1. The partner or child who accompanies to Australia, an employee to whom Article 8 paragraph 2 or 3 applies shall, for any period in which he or she is not working in the territory of Australia, be subject to Netherlands' legislation and be considered to be resident in the territory of the Kingdom of the Netherlands.

2. The partner or child who accompanies to the Netherlands an employee to whom Article 8 paragraph 2 or 3 applies shall not be subject to Netherlands' legislation for any period in which he or she is not working in the territory of the Kingdom of the Netherlands.

PART III

PROVISIONS RELATING TO AUSTRALIAN BENEFITS

Article 12

Residence or Presence in the Netherlands or a Third State

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 the Netherlands 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 or the Netherlands 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.

Article 13

Partner related Australian benefits

A person who receives from Australia an Australian wife pension under the social security laws of Australia due to the fact that the partner of that person receives, by virtue of this Agreement an Australian benefit, shall be deemed to be receiving that wife pension by virtue of this Agreement.

Article 14

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 him or her, on that ground, under the legislation of Australia for that Australian benefit; and
 - b) a period of Australian working life residence equal to or greater than the period identified in paragraph 4 for that person,
 - c) and has accumulated a period of insurance;then, for the purposes of a claim for that Australian benefit, that period

of insurance shall be deemed, only for the purposes of meeting any minimum qualifying periods for that benefit set out in the legislation of Australia, to be a period in which that person was an Australian resident.

2. For the purpose 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 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 shall be deemed to be one continuous period.

3. For all purposes of this Article, where a period by a person as an Australian resident and a period of insurance accumulated by that person 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 claimed by a person residing outside Australia, the minimum period required shall be one year, of which at least six months must be continuous, and

b) for the purposes of an Australian benefit claimed by an Australian resident there shall be no minimum period of Australian working life residence.

Article 15

Calculation of Australian Benefits

1. Subject to paragraph 2, where a person who is outside Australia is qualified for an Australian benefit only by virtue of this Agreement, the rate of that benefit shall be determined according to the legislation of Australia but on the basis that the additional child amount rate is nil.

2. When assessing the income of a person who is outside Australia for the purposes of calculating the rate of a benefit whether payable by virtue of this Agreement or otherwise;

a) any payment according to the Algemene Bijstandswet to that person under the legislation of the Netherlands shall be disregarded;

b) any payment of AOW-toeslag shall be disregarded; and

c) if a proportionalised rate of Australian benefit is payable under the legislation of Australia then only a proportion of any other Netherlands' old age benefit which is received by 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 residence in Australia (not exceeding 300) by the amount of that Netherlands' benefit and dividing that product by 300.

The calculation described in sub-paragraph c may be expressed as

$$A = \frac{Q}{300} \times \frac{[R - (NP \times Q/300 + I - F)]}{T}$$

where:

- A** = rate of Australian benefit payable;
- Q** = number of months of the period of residence in Australia of the person or 300 whichever is the lower;
- R** = maximum rate of Australian benefit;
- NP** = Netherlands' benefit excluding AOW toeslag;
- I** = income within the meaning of Australian legislation excluding Netherlands' benefit and any payments according to the Algemene Bijstandswet;
- F** = free area under the Australian income test;
- T** = the relevant taper under Australian legislation.

3. The provisions in paragraphs 1 and 2 shall continue to apply for 26 weeks where a person comes temporarily to Australia.

4. Subject to the provisions in paragraphs 5 and 6, where a person who is in Australia is qualified to receive an Australian benefit 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 but disregarding in that calculation the Netherlands' benefit received by that person; and
- b) deducting the amount of the Netherlands' benefit received by that person 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 person is, or his or her partner is, or both that person and his or her partner are, in receipt of a Netherlands' benefit or benefits, each of them shall be deemed, for the purpose of paragraph 4 and for the Acts forming the social security law as amended from time to time, 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 16

Exclusion of specified Netherlands' payments from the Australian income test

1. Where a person receives or is entitled to receive a benefit under the social security laws of Australia:

- a) reimbursement payments for extra medical, nursing and immediately related expenses of a victim of persecution; and
- b) the special allowance covering the extra medical expenses a victim of persecution has, but which are beyond his or her capacity to meet, while maintaining a certain standard of living, made under the *State Assistance Scheme of the 1940-1945 Victims of Persecution* (WUV), shall not be included as income for the purpose of assessing the rate of that Australian benefit.

2. For the purposes of this Article only, the term *benefit* shall include all social security payments under the social security laws of Australia.

PART IV

PROVISIONS RELATING TO THE NETHERLANDS BENEFITS

Article 17

Benefits under the General Old Age Pensions Act

1. The Netherlands' Competent Institution shall determine the old age pension directly and exclusively on the basis of periods of insurance completed under the Netherlands' General Old Age Pensions Act.

2. Subject to paragraph 3, periods before January 1, 1957 during which a national of one Party after reaching the age of fifteen, resided in the territory of the Kingdom of the Netherlands or during which, while residing in another country the person was gainfully employed in the Kingdom of the Netherlands, shall also be considered as periods of insurance if the person does not satisfy the condition of the Netherlands' legislation permitting such periods to be treated for that person as periods of insurance.

3. The periods referred to in paragraph 2 shall be taken into consideration in the calculation of the old age pension only if the person concerned has been insured under the Netherlands' General Old Age Pensions Act and has resided for at least six years in the territory of one or both Parties after reaching the age of fifty-nine and only while the person is residing in the territory of either Party. However, the periods before January 1, 1957 shall not be taken into consideration if they coincide with periods taken into consideration for the calculation of an old age pension under the legislation of a country other than the Kingdom of the Netherlands.

Article 18

Benefits under the invalidity insurance for employees and the self-employed

1. A person eligible for a benefit according to subparagraph 1(a)(i)(B) of Article 2 and who was employed and/or self employed in the Neth-

erlands during at least one year shall, subject to paragraphs 2 and 3, be entitled to the Netherlands' invalidity insurance for employees or the self-employed.

2. The benefit shall be determined:

a) according to the Netherlands' Disability Act (WAO) in any case where the person was employed, at the moment the incapacity for work followed by invalidity occurred; and

b) according to the Netherlands' self-employed persons Disability Benefits Act (WAZ) in any case where the person was, in the year prior to the occurrence of the incapacity for work followed by invalidity, lastly a self-employed person.

3. The benefit established according to this Article shall be multiplied by a factor, of which the numerator consists of the total period in months in which the person was employed and/or self-employed in the Netherlands and the denominator consists of the period in months between the age of 15 and the moment the incapacity for work followed by invalidity occurred.

Article 19

Refusal to pay, suspension, withdrawal

The Competent Institution of the Netherlands may refuse to pay, may suspend or may withdraw a benefit if the applicant or the beneficiary fails to provide prompt and sufficient information necessary for the application or the payment of the benefit, or fails to undergo any examination as required.

PART V

COMMON PROVISIONS

Article 20

Common Provisions for the Calculation of Benefits

1. Where a Party (the first Party) makes a payment under this Agreement or under its social security laws to a person who resides in the territory of the other Party, the first Party will disregard from the application of any income test it applies any income-tested payment made by the other Party under this Agreement or under the other Party's social security laws to that person.

2. For the purposes of this Article, the Netherlands' invalidity benefits under WAO and WAZ shall be deemed to be income-tested benefits and the Netherlands' rent subsidy shall be deemed to be paid under the Netherlands' social security laws.

3. The principles set out in paragraphs 1 and 2 will continue to apply when a beneficiary moves to reside in a third country as if the beneficiary had not moved to that third country, provided that the relevant benefit is payable in that third country.

4. Where a person residing in a third country lodges a valid claim for a benefit, the principles set out in paragraphs 1 and 2 will be applied as if that person was resident in the territory of the Party where he or she was last resident before moving to that third country provided that the relevant benefit is payable in that third country.

PART VI

MISCELLANEOUS AND ADMINISTRATIVE PROVISIONS

Article 21

Lodgement of Documents

1. Any claim, notice or appeal concerning the determination or payment of a benefit under the legislation of one Party which should for the purposes of that legislation, have been presented within a prescribed period to a Competent Authority, Competent Institution or Tribunal of that Party, but which is presented within the same period to a Competent Authority, Competent Institution or Tribunal of the other Party, shall be treated as if it had been presented to the Competent Authority, Competent Institution or Tribunal of the first Party. The date on which such a claim, notice or appeal was submitted to that Competent Authority, Competent Institution or Tribunal of the first Party shall be considered only for the purposes of assessing entitlement to benefit as the date of its submission to that Competent Authority, Competent Institution or Tribunal of the other Party.

2. A claim for a benefit under the legislation of one Party shall be deemed to be a claim for the corresponding benefit under the legislation of the other Party, provided that the applicant:

- a) requests that it be considered an application under the legislation of the other Party, or
- b) provides information at the time of application indicating that periods of residence or periods of insurance have been completed under the legislation of the other Party and the claim is received by the Competent Institution of the other Party within six months from the date of lodgement with the first Party.

3. In any case to which paragraph 1 or 2 applies, the Competent Authority, Competent Institution or Tribunal to which the claim, notice or appeal has been submitted shall transmit it without delay to the Competent Authority, Competent Institution or Tribunal of the other Party.

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 legislations.

Article 22

Recovery of overpayments

1. Where

a) a benefit under this Agreement is claimed from, or is being paid by, one of the Parties; and

b) there are reasonable grounds for believing that the claimant may also be entitled, whether by virtue of this Agreement or otherwise, to a benefit from the other Party and that, if paid, would affect the amount of that first-mentioned benefit;

that first-mentioned benefit shall not be paid or continue to be paid if a claim is not duly lodged for payment of the second-mentioned benefit or if that claim is not actively pursued.

2. Where:

a) a benefit under this Agreement or otherwise is claimed from one of the Parties and, as a result of that claim, a benefit is payable by a Party to a person in respect of a past period and that past period occurred after the entry into force of this Agreement;

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 that other Party would have been reduced had the benefit referred to in subparagraph (a) been paid during that past period,

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 the past period shall, for the purposes of this Article, be referred to as an "overpayment".

3. A Competent Institution which has made an overpayment of a benefit to a beneficiary may request the other Competent Institution which is required to pay a corresponding benefit to that beneficiary to deduct the amount of the overpayment from any arrears of that corresponding benefit which the latter Competent Institution pays to that beneficiary. The latter Competent Institution shall if so requested deduct the amount of the overpayment from those arrears and transfer it to the former Competent Institution. Where the whole or part of any overpayment cannot be deducted from any arrears the provisions of paragraph 4 shall apply.

4. Where a Competent Institution of a Party is unable to recover pursuant to paragraph 3 all the amount of an overpayment it has made, it may, within the conditions and limits laid down by the legislation which it applies, request the Competent Institution of the other Party to deduct

the unrecovered amount of the overpayment from any pension, benefit or allowance which the latter Competent Institution pays to the beneficiary. The latter Competent Institution shall make the deductions under the conditions and within the limits set out in the legislation which it applies as if it had made the overpayment and shall transfer the amounts deducted to the former Competent Institution.

5. The amount of any overpayment shall be a debt due by the person who received it to the Party that paid it.

6. A Party may determine that the amount, or any part, of the debt owing to it under paragraph 4 may be deducted from future payments of any pension, benefit or allowance payable at any time by that Party to the person owing the debt.

7. The Competent Institution receiving a request under paragraph 3 shall take the action agreed upon between the liaison agencies to recoup the amount of the overpayment and to transfer it to the other Competent Institution.

Article 23

Payments of Benefits

1. If a Party imposes legal or administrative restrictions on the transfer of its currency abroad, both Parties shall adopt measures as soon as practicable to guarantee the rights to payment of benefits derived under this Agreement or to payment of social security contributions. Those measures shall operate retrospectively to the time the restrictions were imposed.

2. 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 the other Party or outside the respective territories of both Parties, without deduction for government administrative fees and charges for processing and paying that benefit.

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.

4. 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 authorities and institutions in the same territory, shall also apply to certificates and documents which, for the purposes of this Agreement, have to be submitted to authorities and 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 or consular authorities.

5. Where a person is in receipt of a benefit or benefits under this Agreement and is in a third country, the Party paying that benefit or those benefits shall continue to pay that benefit or those benefits if that Party has implemented an agreement on social security with that third country which provides for the portability of that benefit or those benefits.

Article 24

Exchange of Information and Mutual Assistance

1. The Competent Authorities and Competent Institutions responsible for the application of this Agreement shall:

a) to the extent permitted by the legislation which they administer, communicate to each other any information necessary for the application of this Agreement;

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 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;

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 25;

e) jointly endeavour to resolve any difficulties or doubts arising as to the application of this Agreement.

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.

3. Unless disclosure is required under the laws 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 Institutions of a Party may communicate with the other in the official language of that Party.

Article 25

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. Liaison agencies shall be designated to facilitate the implementation of this Agreement.

Article 26

Review of the Agreement

Where a Party requests the other to meet to review this Agreement, the Parties shall meet for that purpose no later than 6 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 VII

TRANSITIONAL AND FINAL PROVISIONS

Article 27

Commencement of Benefits

1. The commencement date for payment of a benefit under 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. 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 insurance, and
b) any event or fact which is relevant to that entitlement,
shall, subject to this Agreement, be taken into account insofar as those periods or those events are applicable in regard to that person no matter when they were accumulated or occurred.

3. Subject to Article 28 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.

4. Subject to Article 28 and to paragraph 3, a person may be qualified to receive a benefit, other than a lump sum payment, under this Agreement in respect of events which happened before the date of entry into force of this Agreement.

Article 28

Transitional Provisions

1. Upon the entry into force of this Agreement the 1991 Agreement shall terminate and shall be replaced by this Agreement.

2. Any right to benefit acquired in accordance with the 1991 Agreement shall be maintained. For the purposes of this paragraph "any right to benefit acquired" includes any right which a person would have had but for his or her failure to claim timeously where a late claim is allowed.

3. Any rights in course of acquisition under the 1991 Agreement at the date of entry into force of this Agreement shall be settled in accordance with the Agreement in force at the date of entitlement.

4. Where, from the date of entry into force of this Agreement, any claim to benefit has not been determined and entitlement arises before that date, the claim shall be determined in accordance with the 1991 Agreement and shall be determined afresh in accordance with this Agreement from its date of entry into force if this is more favourable than the rate determined under the 1991 Agreement.

5. Benefits, other than lump sum payments, shall be payable in accordance with this Agreement in respect of events which happened before the date of its entry into force, except that an accident which occurred or a disease which developed before that date shall not, solely by virtue of this Agreement, be treated as an industrial accident or an industrial disease if it would not have been so treated under any legislation or Agreement having effect at the time of its occurrence or development. For the purpose of determining claims in accordance with this Agreement, account shall be taken, where appropriate, of insurance periods and periods of residence, employment or presence, completed before the date of its entry into force.

6. Paragraph 5 shall not confer any right to receive payment of benefit for any period before the date of entry into force of this Agreement.

7. For the purpose of applying the first sentence of paragraph 5:

a) any right to benefit acquired by a national in accordance with the 1991 Agreement may, at the request of the national concerned, be determined afresh in accordance with this Agreement with effect from the date of entry into force of this Agreement provided that the request has been made within two years of the date it enters into force and, if applicable, benefit awarded at the higher rate from the latter date;

b) where the request for the benefit to be determined afresh is made more than two years after the date of entry into force of this Agreement payment of benefit, and the payment of any arrears, shall be made in accordance with the legislation concerned.

8. No provision of this Agreement shall diminish any rights or benefits which a person has properly acquired under the legislation of either Party before the date of entry into force of this Agreement.

Article 29

Entry Into Force and Termination

1. Both Parties shall notify each other in writing of the completion of their respective statutory and constitutional procedures required for entry into force of this Agreement and the Agreement shall enter into force on the first day of the third month following the date of the last notification.

2. Until entry into force of this Agreement, the Kingdom of the Netherlands shall apply subparagraph 1(b) of Article 2 and Article 5 from the first day of the second month following signature and also, for the Kingdom of the Netherlands, subparagraph 1(b) of Article 2 and Article 5 shall have retrospective effect to 1 January 2000.

3. Subject to paragraph 4, this Agreement shall remain in force until the expiration of 12 months from the date on which either Party receives a note from the other through the diplomatic channel giving notice of termination of this Agreement.

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

a) at the date of termination, are in receipt of benefits, or

b) prior to the expiry of the period referred to in that paragraph, have lodged claims for, and would be entitled to receive, benefits; by virtue of this Agreement; or

c) immediately before the date of termination are subject only to the legislation of one Party by virtue of paragraph 2 or 3 of Article 8 of Part II, Section A of the Agreement, provided the employee continues to satisfy the criteria of these paragraphs.

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

DONE in duplicate at The Hague this 2nd day of July 2001, in the English language.

For the Government of the Kingdom of the Netherlands

(sd.) J. F. HOOGERVORST

For the Government of Australia

(sd.) PETER ANTHONY HUSSIN

D. PARLEMENT

Het Verdrag, met Akkoord, behoeft ingevolge artikel 91 van de Grondwet de goedkeuring der Staten-Generaal, alvorens het Koninkrijk aan het Verdrag kan worden gebonden.

G. INWERKINGTREDING

De bepalingen van het Verdrag zullen ingevolge artikel 29, eerste lid, van het Verdrag in werking treden op de eerste dag van de derde maand na de datum van de laatste schriftelijke kennisgeving door de Verdragssluitende Partijen dat aan hun respectieve wettelijke en grondwettelijke vereisten voor inwerkingtreding van het Verdrag is voldaan.

Ingevolge artikel 29, tweede lid, zullen artikel 2, eerste lid, onderdeel b, en artikel 5 van het Verdrag vanaf 1 september 2001 voorlopig worden toegepast en zullen deze artikelen, vanaf de datum waarop het Verdrag in werking treedt, terugwerkende kracht hebben tot 1 januari 2000.

De bepalingen van het Akkoord zullen ingevolge sectie 15 van het Akkoord in werking treden op de datum waarop het Verdrag in werking treedt.

Wat het Koninkrijk der Nederlanden betreft, zal het Verdrag, met Akkoord, alleen voor Nederland gelden.

J. GEGEVENS

Van het op 18 april 1961 te Wenen tot stand gekomen Verdrag van Wenen inzake diplomatiek verkeer, naar welk Verdrag in artikel 2, achtste lid, van het onderhavige Verdrag wordt verwezen, zijn de Engelse en Franse tekst geplaatst in *Trb.* 1962, 101 en de Nederlandse vertaling in *Trb.* 1962, 159. Zie ook, laatstelijk, *Trb.* 1994, 212.

Van het op 24 april 1963 te Wenen tot stand gekomen Verdrag van Wenen inzake consulaire betrekkingen, naar welk Verdrag in artikel 2, achtste lid, van het onderhavige Verdrag wordt verwezen, zijn de Engelse, Franse en Spaanse tekst geplaatst in *Trb.* 1965, 40 en de Nederlandse vertaling in *Trb.* 1981, 143. Zie ook, laatstelijk, *Trb.* 1994, 213.

Van de op 4 januari 1991 te 's-Gravenhage tot stand gekomen Overeenkomst tussen het Koninkrijk der Nederlanden en Australië inzake sociale zekerheid, naar welke Overeenkomst onder meer in de preambule tot het onderhavige Verdrag wordt verwezen en welke Overeenkomst ingevolge artikel 28, eerste lid, door het onderhavige Verdrag wordt vervangen, zijn de tekst, alsmede de vertaling geplaatst in *Trb.* 1991, 75. Zie ook *Trb.* 1992, 23.

Op 2 juli 2001 is te 's-Gravenhage nog tot stand gekomen het Administratief Akkoord ter uitvoering van het Verdrag inzake Sociale Zekerheid tussen het Koninkrijk der Nederlanden en Australië. De tekst van het Akkoord luidt als volgt:

**Administrative Arrangement for the implementation of the
Agreement on Social Security between the government of the
Kingdom of the Netherlands and the Government of Australia**

Pursuant to Article 25 of the Agreement between the Government of the Kingdom of The Netherlands and the Government of Australia signed at The Hague on 2 July 2001, the Competent Authorities of the Parties hereby make the Administrative Arrangement as set out in the following paragraphs to implement the Agreement

PART I

GENERAL PROVISIONS

Section 1

Definitions

1. For the application of this Administrative Arrangement “Agreement” means the Agreement on Social Security between the Kingdom of The Netherlands and Australia, signed at The Hague on 2 July 2001.
2. Other terms will have the meaning given to them in the Agreement or in this Arrangement

Section 2

Liaison agencies

1. For the application of the Agreement the following are designated as liaison agencies (pursuant to Article 25, paragraph 2 of the Agreement):
 - for Australia:
 - a) For the Acts forming the social security law: Centrelink International Services, Hobart;
 - b) For the law concerning the superannuation guarantee: the Australian Taxation Office;
 - for the Netherlands:
 - a) for Old Age, Survivors benefits and Childrens Allowances: The Sociale Verzekeringsbank (Social Insurance Bank) Amstelveen;
 - b) for Invalidity benefits: Landelijk Instituut Sociale Verzekeringen (National Institute Social Insurances), C/o Gak Nederland bv, Amsterdam.
2. The duties of the liaison agencies are stated in this Arrangement. For the application of the Agreement and this Arrangement, the liaison agencies may communicate directly with each other as well as with the persons concerned or their representatives. The liaison agencies will assist each other in the application of the Agreement.

PART II

PROVISIONS CONCERNING SECONDMENT

Section 3

1. For the purpose of this Section, “liaison agency” means, in relation to Australia:

the Australian Taxation Office;

and in relation to the Netherlands:

the Sociale Verzekeringsbank (Social Insurance Bank), Amstelveen.

2. a) When the legislation of a Party is applicable in accordance with Article 8, paragraph 3 of the Agreement, the Party’s liaison agency, at the request of the employed person or the employer of that person, will issue a certificate stating that the employed person or employer with respect to that person is subject to that Party’s legislation and stating the duration for which the certificate will be valid.

b) If an extension as described in Article 9 of the Agreement takes place, the Party’s liaison agency will, on request, again issue a certificate of coverage.

c) The certificates referred to in the previous paragraphs will be the proof that the legislation of a particular Party applies to an employee and/or their employer.

3. The liaison agency that has issued a certificate under paragraph 2 of this Section will send a copy of the certificate, or details of the certificate, to the liaison agency of the other Party, as required by the other Party.

4. The liaison agencies will be able to communicate direct with each other concerning the operation of Part II, Section A of the Agreement and this Arrangement, and with employers and/or seconded employees to whom Part II, Section A of the Agreement applies.

PART III

PROVISIONS CONCERNING CLAIMS AND APPEALS

Section 4

1. In the case referred to in Article 21 of the Agreement the Competent Authority or the Competent Institution or liaison agency of a Party with which a claim for benefits is first filed, will inform the Competent Institution or liaison agency of the other Party of this fact without delay and provide the information necessary to complete action on the claim. For the purpose of Article 18 Landelijk Instituut Sociale Verzekeringen (National Institute Social Insurances), C/o Gak Nederland bv, Amsterdam is the Competent Institution in the Netherlands.

2. The Competent Institution or liaison agency as mentioned in paragraph 1 which receives a claim that was first filed with an agency of the other Party, will without delay provide the latter agency with such information as may be required to complete action on the claim.

Section 5

Verification of claims and payments

1. After receipt of a claim the Competent Institution or liaison agency of the Party will verify the information regarding the claimant and the relevant members of his or her household and, if applicable, forward this evidence along with other relevant documents to the Competent Institution or liaison agency of the other Party, so that the latter can process the application further.

2. Paragraph 1 also applies when the Competent Institution of a Party requests the other Party to conduct an investigation to verify the legitimacy of payments made to beneficiaries living or residing in the territory of that other Party.

3. The information referred to in the first and second paragraphs of this section also includes information regarding address, work, education, income, family and civil situation, ability for work or medical condition.

4. The Competent Institutions (Competent Authorities and liaison agencies) of the Parties may contact each other, as well as their respective beneficiaries or their representatives directly.

5. The diplomatic or consular representatives and the Competent Institutions of the Parties may contact the authorities in the territory of the other Party directly in order to determine entitlement to benefit and legitimacy of payments to their respective beneficiaries.

6. The term authorities mentioned in the previous paragraph are the tax authorities, population registers, marriage registers, employment agencies and schools.

7. In no case will the provisions of this section be construed so as to impose on the Competent Institution 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 the normal course of administration of that or the other Party.

Section 6

Identification

In order to determine the entitlement to benefit and legitimacy of payments under the Netherlands' legislation, a person who falls under the

scope of the Agreement is obliged to identify himself or herself by submitting official proof of identity to the Competent Institution in Australia. The Australian institution properly identifies the claimant on the basis of this identification. Proper identification includes a valid passport or any other valid proof of identity issued by the relevant authorities in the person's country of residence. The Australian institution will inform the Netherlands' Competent Institution that the identity of the claimant has been verified properly by sending a copy of the identification document.

Section 7

A Competent Authority, Competent Institution or liaison agency which receives claims, appeals and related documents under the legislation of the other Party will:

- a) stamp on each document the date of receipt;
- b) record the receipt of each document in its own liaison agency; and
- c) send the documents as soon as possible to the liaison agency of the other Party.

Section 8

Verification of medical information

1. At the request of the Competent Institution of the Netherlands, verification of administrative and medical information regarding claimants or recipients of Netherlands' benefits living in Australia will be carried out by Centrelink (the liaison agency for Australia).

2. At the request of the Competent Institution of Australia, verification of administrative and medical information about claimants or recipients of Australian benefits living in the Netherlands will be carried out by the Landelijk Instituut Sociale Verzekeringen (National Institute Social Insurances), C/o Gak Nederland bv, Amsterdam and the Sociale Verzekeringsbank (Social Insurance Bank), Amstelveen.

3. In order to determine the degree of disability for work, the Competent Institutions of both Parties will use the medical reports and the administrative data given to it by the Competent Institution of the other Party, but each Competent Institution nevertheless reserves the right to have the claimant or beneficiary examined by a doctor of their own choice or to summon the person involved to undergo a medical examination in its own territory.

4. The person involved is obliged to comply with any request to undergo a medical examination as mentioned in paragraph 3 by presenting himself or herself for medical examination. If the person feels that, for medical reasons, he or she is unfit to travel to the territory of the Party where he or she has been summoned by the Competent Insti-

tution, the person must inform that institution immediately. The person will then be obliged to submit a medical statement issued by a doctor designated for this purpose by the Competent Institution of the other Party. This statement must include the medical reasons for his unfitness for travelling as well as the expected duration of this unfitness.

5. The Competent Institution which requests a medical examination or travel for the purposes of paragraph (3) will pay the costs of the examination and, the expenses for travel and accommodation, of the person concerned.

Section 9

Claims under other Agreements

1. A Competent Institution of a Party will accept on behalf of the Competent Institution of the other Party a claim for a benefit made by a person under an agreement on social security between the latter Party and a third State and will stamp that claim with the date of receipt and send it to the liaison agency of the other party as soon as possible.

A Competent Institution which has received from the other Competent Institution a claim described in paragraph 1 of this section may request specific assistance from the other Competent Institution in regard to the determination of that claim and that other Competent Institution will provide, to the extent practicable, such assistance as if that claim were made under the Agreement.

Section 10

Exchange of information

The exchange of information referred to in Article 24 of the Agreement is carried out in so far as social security purposes are involved and this exchange is in conformity with normal administrative practice.

PART IV

MISCELLANEOUS PROVISIONS

Section 11

Forms and Procedures

1. The liaison agencies of the Parties will agree on the forms and procedures necessary to implement the Agreement and this Arrangement.

2. The liaison agencies may agree on supplementary administrative procedures for the implementation of this Arrangement.

Section 12

Language

The liaison agencies will, where necessary, assist each other in translating forms and other documents written in their official languages, into English or Dutch as required.

Section 13

Statistics

The liaison agencies will exchange statistics on an annual basis, and in a form to be agreed upon, regarding the payments which each has made under the Agreement. These statistics will include data on the number of beneficiaries and the total amount of benefits paid, by type of benefit.

Section 14

Correspondence

The liaison agencies will inform each other by means of the forms referred to in Section 11 in respect of the award, revision, suspension or withdrawal of benefits to which the Agreement applies.

Section 15

Operation

This Administrative Arrangement will enter into force on the date of entry into force of the Agreement and will have the same period of validity,

Signed at The Hague on this 2nd day of July 2001, in duplicate in the English language.

For the Netherlands' Competent Authority

(sd.) J. F. HOOGERVORST

For the Australian Competent Authority

(sd.) PETER ANTHONY HUSSIN

De bepalingen van het Akkoord zullen ingevolge artikel 15 van het Akkoord in werking treden op dezelfde datum als het onderhavige Verdrag.

In overeenstemming met artikel 19, tweede lid, van de Rijkswet goedkeuring en bekendmaking verdragen heeft de Minister van Buitenlandse Zaken bepaald dat het Verdrag zal zijn bekendgemaakt in Nederland op de dag na de datum van uitgifte van dit Tractatenblad.

Uitgegeven de *zesentwintigste* juli 2001.

De Minister van Buitenlandse Zaken,

J. J. VAN AARTSEN