

Department of Foreign Affairs and Trade

Canberra

**Agreement Between
The Government of Australia and
the Government of the United States of America
for the Enforcement of
Maintenance (Support) Obligations.**

Canberra, 12 December 2002

Entry into force: 12 December 2002

Australian Treaty Series

2002 No. 24

The Government of Australia

and

The Government of the United States of America (hereinafter referred to as the Parties),

Resolved to establish a uniform and effective framework for the enforcement of maintenance obligations and the recognition of maintenance decisions, and

In accordance with procedures for the conclusion of reciprocal enforcement of maintenance agreements provided for by the law of Australia and authorized by the United States Congress in section 459A of the Social Security Act, Title 42, United States Code, section 659A,

Have agreed as follows:

Article 1 - Objective

1. Subject to the provisions of this Agreement, the Parties hereby seek to provide for:
 - a. the recovery of maintenance or the reimbursement of maintenance to which a maintenance creditor or a public body having provided benefits for a maintenance creditor in one Party (hereinafter referred to as the claimant) is entitled from a maintenance debtor who is subject to the jurisdiction of the other Party (hereinafter referred to as the respondent), and
 - b. the recognition and enforcement of maintenance orders, reimbursement orders and settlements (hereinafter referred to as maintenance decisions) made or recognized in either Party.

Article 2 - Scope

1. This Agreement shall apply to maintenance obligations arising from a marriage or parentage, including a maintenance obligation towards a child born out of wedlock. However a maintenance obligation towards a spouse or former spouse where there are no minor children will be enforced in the United States under this Agreement only in those States and other jurisdictions of the United States that elect to do so.
2. This Agreement applies to the collection of payment arrears on a valid maintenance obligation and any applicable interest on arrears and to the modification or other official change in amounts due under an existing maintenance decision.
3. The remedies provided for in this Agreement are not exclusive and do not affect the availability of any other remedies for the enforcement of a valid maintenance obligation under the law of either Party nor do they preclude the Parties from entering into international agreements addressing these issues.

Article 3 - Central Authorities

1. The Parties shall each designate a body as Central Authority which shall facilitate compliance with the provisions of this Agreement.
2. The Central Authority for Australia shall be the Child Support Registrar.

3. The Central Authority for the United States shall be the Office of Child Support Enforcement in the Department of Health and Human Services, as authorized by Title:

IV-D of the Social Security Act.

4. The Parties may designate additional public bodies to carry out any of the provisions of this Agreement in coordination with the Central Authority.
5. Any changes in the designation of the Central Authority or other public bodies by one Party shall be communicated promptly to the Central Authority of the other Party.
6. Communications may be addressed by the Central Authority or other public body of one Party directly to the Central Authority or other responsible public body of the other Party as designated by that Party.

Article 4 - Applications and Transmission of Documents and Judicial Assistance

1. An application for the recovery or reimbursement of maintenance from a respondent in one of the Parties (hereinafter the Requested Party) shall be made by the Central Authority or other designated public body of the other Party (hereinafter the Requesting Party), in accordance with the applicable procedures of the Requesting Party.
2. The application shall be made on a standard form to be agreed upon by the Central Authorities of both Parties, and shall be accompanied by all relevant documents.
3. The Central Authority or other designated public body of the Requesting Party shall transmit the documents referred to in paragraphs 2 and 5 of this Article to the Central Authority or other designated public body of the Requested Party.
4. Before transmitting the documents to the Requested Party, the Central Authority or other designated public body of the Requesting Party shall satisfy itself that they comply with the law of the Requesting Party and the requirements of this Agreement.
5. When the application is based on, or the documents include, a decision issued by a competent court or agency establishing parentage or for the payment of maintenance:
 - a. the Central Authority of the Requesting Party shall transmit a copy of the decision certified or verified in accordance with the requirements of the Requested Party;
 - b. the decision shall be accompanied by a statement of finality or, if not final, a statement of enforceability and by evidence that the respondent has appeared in the proceedings or has been given notice and an opportunity to appear;
 - c. the Central Authority or other designated body of the Requesting Party shall notify the Central Authority or other designated body of the Requested Party of any subsequent change by operation of law in the amount required to be enforced under the decision.
6. In carrying out their tasks under this Agreement, the Parties shall provide each other assistance and information within the limits of their respective laws and

consistent with any treaties related to judicial assistance in force between the Parties.

7. All documents transmitted under this Agreement shall be exempt from legalization.

Article 5 - Functions of the Central Authority of the Requested Party.

The Central Authority or other designated public body of the Requested Party shall take on behalf of the claimant all appropriate steps for the recovery or reimbursement of maintenance, including the institution and prosecution of proceedings for maintenance, the

determination of parentage where necessary, the execution of any judicial or administrative decision and the collection and distribution of payments collected.

Article 6 - Cost of Services

All procedures described in this Agreement, including services of the Central Authority, and necessary legal and administrative assistance, shall be provided by the Requested Party without cost to the claimant. The costs of testing blood or tissue for parentage determinations shall be borne by the Party in which the proceeding takes place. A Party may assess costs against the respondent appearing in that Party's jurisdiction.

Article 7 - Recognition and Enforcement of Maintenance Decisions

1. Enforceable decisions for family maintenance issued by the courts or other authorized agencies of one Party shall be recognized and enforced in the courts or other authorized agencies of the other Party to the extent that the facts in the case support jurisdiction, recognition and enforcement under the applicable law and procedures of the latter Party.
2. In proceedings before a judicial or administrative authority of one Party to establish or enforce maintenance obligations, the authority:
 - a. shall recognise a determination of parentage made in the territory of the other Party if the determination is a finding by a judicial authority, an entry in a public register of births or an instrument of acknowledgment by the parent which is registered with a public authority, and
 - b. may recognise a determination of parentage made in the territory of the other Party which is not of a kind referred to in paragraph 2a above.
3. A determination recognised in accordance with article 7.2 shall be recognised to the extent that the facts in the case support jurisdiction and recognition under the applicable laws and procedures of the Party in which proceedings to establish or enforce maintenance obligations occur.
4. Where an authority declines to recognize a determination of parentage referred to in paragraph 7.2(b) above, the Central Authority or other designated public body of the Requested Party shall take all appropriate steps in accordance with article 5 to institute and prosecute proceedings in territory of the Requested Party on behalf of the claimant for the determination of parentage.
5. Orders entered or decisions made after the failure of the respondent to appear in the proceedings shall be considered as decisions under paragraphs 1 and 2 above if it is demonstrated that notice had been given and the opportunity to be heard had been afforded in a way to satisfy the standards of the Requested Party.

Article 8 - Applicable Law

1. All actions and proceedings under this Agreement by either Party shall be carried out pursuant to the law including choice of law provisions and procedures of that Party.
2. The physical presence of the child or custodial parent shall not be required in proceedings under this Agreement within the jurisdiction of the Requested Party.

Article 9 - Geographical applicability

1. For Australia this Agreement shall apply to Australia including Norfolk Island, the territory of Christmas Island and the territory of Cocos (Keeling) Islands.
2. For the United States of America, this Agreement shall apply to the fifty states, American Samoa, the District of Columbia, Guam, Puerto Rico, the United States Virgin Islands, and any other jurisdiction of the United States participating in Title IV-D of the Social Security Act.

Article 10 - Entry into Force

1. This Agreement shall enter into force on the later of the dates on which each Party notifies the other Party in writing through the diplomatic channel that the legal requirements for entry into force have been fulfilled.
2. This Agreement shall apply to any outstanding maintenance decision or determination described in Article 7, or payment accrued under such decision, regardless of the date of that decision or determination.

Article 11 - Termination

1. Either Party may terminate this Agreement by a notification in writing addressed to the other Party through diplomatic channels.
2. The termination shall take effect on receipt of the notification.

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

Done at Canberra, in duplicate this twelfth day of December 2002

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA



FOR THE GOVERNMENT OF AUSTRALIA

