

**Arrangement
between
the Government of Cook Islands
and
the Government of Australia
on
Shared Retirement Savings Portability**

Context

1. The Government of Cook Islands and the Government of Australia (the Governments):
 - a. recognise each other's integral role in the Pacific family and the significant Cook Islands diaspora living and working in Australia;
 - b. mutually decide to complement Australia's current bilateral portability arrangements with New Zealand, through a separate arrangement between Australia and Cook Islands that will provide equivalent access to retirement savings between each country; and
 - c. commit to harmonising retirement savings portability arrangements with New Zealand by implementing reciprocal superannuation portability arrangements as referenced in the Cook Islands – Australia 'Oa Tumanava Partnership. This will support movement of each country's respective diaspora between Cook Islands and Australia for economic, family, health and cultural reasons; and
 - d. have reached the understandings outlined in this Arrangement.

Purpose

2. This Arrangement embodies the understandings of the Governments and is to give effect to the Governments' shared intention to allow for portability of retirement savings. It does not create any legally binding rights or obligations.

Definitions

3. In this Arrangement:

"source country" means: the country in which an individual's retirement savings were first held.

"host country" means: the country to which an individual's retirement savings will be transferred.

"provider" means: Cook Islands National Superannuation Fund, or an Australian complying superannuation fund.

"self-managed superannuation fund" means: a self-managed superannuation fund as defined in the *Australian Superannuation Industry (Supervision) Act 1993*.

"complying superannuation fund" means: an complying superannuation fund as defined in the *Australian Superannuation Industry (Supervision) Act 1993*.

“retirement savings” means:

- a. savings held in the Cook Islands National Superannuation Fund, or
- b. savings held in an Australian complying superannuation fund that is regulated by the Australian Prudential Regulation Authority, including individual, employer and government contributions.

“compulsory account” means:

- a. a specified membership account in the Cook Islands National Superannuation Fund where all superannuation contributions that a Cook Islander employee receives from their employer and all contributions that a Cook Islander makes as an employee under mandatory obligations to make contributions are held. For administration purposes these amounts are recorded separately. This is a separate account to the voluntary account.

“voluntary account” means:

- a. a specified membership account in the Cook Islands National Superannuation Fund which comprises of superannuation contributions that a Cook Islander chooses to voluntarily add to the fund. This is a separate account to the compulsory account.

Principles of Retirement Savings Portability

4. The Australia and Cook Islands retirement savings portability scheme established by this Arrangement is based upon the following four principles:

- a. reciprocal retirement savings portability should strengthen people-to-people links and achieve greater prosperity for our people;
- b. portability should allow retirement savings to be dealt with in a manner that generally meets standards for the treatment of retirement savings that are set by the host country;
- c. portability should not lead to an unnecessary loss in the value of retirement savings; and
- d. compliance and administration costs associated with the scheme should, where possible, be minimised.

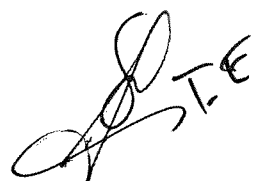
Portability Working Arrangements

5. The Governments have mutually decided that retirement savings held in Australian complying superannuation funds or the Cook Islands National Superannuation Fund may be transferred between Australia and Cook Islands. To implement this understanding, the Governments consent to the arrangements outlined below.

6. For the avoidance of doubt, under this Arrangement, the following will not be transferred:
 - a. Australian-sourced retirement savings from an Australian untaxed source, or an Australian defined benefit scheme, will not be transferred to the Cook Islands National Superannuation Fund.
 - b. Any Cook Islands National Superannuation Fund defined lifetime pension benefit that has commenced will not be transferred to an Australian complying superannuation fund.



7. The arrangements to enhance portability will be voluntary for providers as to whether they will accept transferred retirement savings. The arrangements will also be voluntary for individuals to transfer their retirement savings between Australia and Cook Islands.
 - a. Australian complying superannuation providers will be required to transfer retirement savings to the Cook Islands National Superannuation Fund where a valid request has been made.
 - b. The Cook Islands National Superannuation Fund will be required to transfer retirement savings to an Australian complying superannuation provider where a valid request has been made.
8. The transfer of retirement savings may take place once an individual has provided their source country provider with all the relevant details of the chosen host country provider. The Government of the source country may also require an individual to provide additional information (such as proof of address in the host country) to the source country Government or provider, before the retirement savings can be transferred to the host country.
9. Retirement savings will only be transferred to a provider in the host country that complies with conditions placed on the treatment of those savings by the source country, as outlined in this Arrangement. The Governments will provide for source country specific rules outlined in this Arrangement to be applied in the host country.
10. The transferred retirement savings will be separately identifiable within the account established in the host country. This separate

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identification will allow the source country specific rules outlined in paragraph 13 to be applied to retirement savings that are transferred to the host country. That is, the transferring provider will inform the receiving provider of the total amount of retirement savings to be transferred, the amounts that were accumulated in Australia and amounts that were accumulated in Cook Islands.

11. The Governments will exempt retirement savings transfers between the two countries from any entry or exit taxes and measures aimed at recouping Crown contributions to retirement savings. These include:

a. in the case of Cook Islands:

- i. an exemption from measures that seek to recover member tax credits from Cook Islands National Superannuation Fund savings;
- ii. an exemption at the point of entry for Australian-sourced retirement savings from being treated as dividends for taxation purposes; and
- iii. an exemption from the wait period for retirement savings to be paid for foreign or non-resident workers.

b. in the case of Australia:

- i. an exemption from the withholding tax levied on Australian-sourced retirement savings taken out of Australia by temporary residents.

12. Cook Islands-sourced retirement savings from the voluntary account will continue to be subject to the Australian non-concessional contribution cap arrangements at the initial point of entry. Cook

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Islands-sourced retirement savings from the compulsory account will be exempt from Australian superannuation contribution caps. The entire transferred amount, including the compulsory account component, will still count towards the individual's total superannuation balance. Australian-sourced retirement savings and any Cook Islands-sourced retirement savings re-entering Australia will be exempted from the contribution caps upon re-entering the Australian superannuation system. The Australian Government will determine how Australian-sourced retirement savings repatriated to Australia are to be treated for taxation purposes.

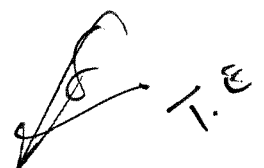
13. Retirement savings transferred between Australia and Cook Islands will be made subject to host country rules, with the following exceptions:

- a. Australian-sourced retirement savings held in a Cook Islands National Superannuation Fund account may be accessed when an individual reaches age 60 and satisfies the definition of retirement at that age, as set out in the Australian Superannuation Industry (Supervision) Regulations 1994.
- b. Australian-sourced retirement savings held in a Cook Islands National Superannuation Fund account may not be transferred to a third country.
- c. Cook Islands-sourced retirement savings will only be transferred to, and held by, Australian complying superannuation funds that are regulated by the Australian Prudential Regulation Authority. However, these retirement savings may be subsequently transferred to, and held by, the Australian Commissioner of Taxation in accordance with the *Superannuation (Unclaimed*

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Money and Lost Members) Act 1999. Furthermore, these retirement savings will not be transferred to, or held in, Australian self-managed superannuation funds.

- d. Cook Islands-sourced retirement savings held in an Australian complying superannuation fund will not be able to be accessed under the retirement or attaining preservation age conditions of release, as defined in the Australian Superannuation Industry (Supervision) Regulations 1994, until the Normal Retirement Age has been reached as defined in the Cook Islands National Superannuation Fund trust deed.
 - e. Cook Islands-sourced retirement savings will not be able to be paid to a person under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* where a criterion for payment is that the person has reached the eligibility age (as defined in that Act) until the Normal Retirement Age as defined in the Cook Islands National Superannuation Fund trust deed has also been reached by the person.
 - f. Cook Islands-sourced retirement savings held in an Australian complying superannuation fund may not be transferred to a third country.
14. For the avoidance of doubt, this Arrangement applies only to retirement savings that are transferred from the source country to the host country. Once transferred, any earnings on these savings will be subject to the rules of the host country. In addition, any decrement to retirement savings balances required by the trustee would first be applied to host country retirement savings, before being applied to retirement savings transferred from the source country.

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- a. Where a decrement in retirement savings balances is required for an account that holds Australian, Cook Islands and New Zealand amounts transferred under both this Arrangement and the Trans-Tasman Retirement Savings Portability Arrangement, the trustee will apply a decrement to the host country amount first, and then to the source country amounts on a first in first out basis.

Consultation

15. The Governments will use their best endeavours to resolve amicably any issues arising out of or in connection with this Arrangement and, as necessary, will consult to that end.
16. The Governments will, at the written request of either, enter into consultations within 20 business days with a view to seeking an early, equitable and mutually satisfactory solution, if the Government which requested the consultation considers that:
 - a. an understanding under this Arrangement is being or may be frustrated; or
 - b. the achievement of any objective of this Arrangement is being or may be frustrated.

Amendment

17. The Governments may amend this Arrangement by mutual decision through an exchange of diplomatic notes. Any such amendments will come into effect on the date specified in those notes.

18. The Governments have mutually decided that they will consult each other in writing on all significant amendments to their respective domestic retirement savings schemes that may affect the implementation of this Arrangement and/or the practical workings of retirement savings portability between Australia and Cook Islands.

Withdrawal, Termination

19. Either Government may withdraw from this Arrangement by giving written notice of that intent. In the event of a notice to withdraw, the Governments will work together to terminate this Arrangement as expeditiously as possible. Termination will take effect at the expiration of 12 months from the date of written notice or on the date specified by mutual arrangement through an exchange of diplomatic notes.

Dialogue on Arrangements

20. The Governments will convene to reflect upon the operation of the Arrangement and its relevant legislation and rules after three years, considering the effectiveness of the arrangements in fostering and enhancing labour and trade between Australia and Cook Islands, and whether any changes to the Arrangement or related legislation are required to improve the operation of the Arrangement. The Governments may convene periodically following this to further consider the operation of the Arrangement.


Effective Date


21. This Arrangement will come into effect on the first day of the second month following the month in which the two Governments have exchanged notes informing each other that their respective constitutional, legislative or administrative matters necessary to give effect to this Arrangement have been fulfilled.

Signed in SYDNEY, in duplicate, this 13th day of November 2024.

For the Government of Cook Islands:

For the Government of Australia:





Hon Tingika Elikana

Hon Stephen Jones MP

Minister of Foreign Affairs

**Assistant Treasurer, Minister for
Financial Services**

