

Social Security (International Agreements) Legislation Amendment Regulations 2003 (No. 1) 2003 No. 374

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 374

Issued by the Authority of the Minister for Family and Community Services

Social Security (International Agreements) Act 1999

Social Security (International Agreements) Legislation Amendment Regulations 2003 (No. 1)

Subsection 8(1) of the *Social Security (International Agreements) Act 1999* (the Act) provides that a Schedule setting out the terms of an agreement between Australia and another country may be added to the Act by regulations, if the agreement relates to reciprocity in social security matters.

Subsection 8(2) of the Act provides that regulations made by virtue of subsection 8(1) must not come into operation on a day earlier than the day on which the agreement concerned comes into operation for Australia.

Section 25 of the Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient for carrying out or giving effect to the Act.

The purpose of the proposed Regulations is to:

- omit the Agreement on Social Security between Australia and the Republic of Chile, inserted as Schedule 15 to the Act, from the *Social Security (International Agreements) Act 1999 Amendment Regulations 2003 (No. 1)* (the Amending Regulations);
- omit the Agreement on Social Security between Australia and the Republic of Croatia, inserted as Schedule 16 to the Act, from the Amending Regulations; and
- re-insert the Agreement on Social Security between Australia and the Republic of Chile, as new Schedule 15 to the Act, to have effect from 1 July 2004.

Omission of Agreements

The Amending Regulations, made on 14 August 2003 and gazetted on 15 August 2003, amended the Act, with effect from 1 January 2004, by adding the Agreements on Social Security between Australia and the Republic of Chile, Australia and the Republic of Croatia, and Australia and the Republic of Slovenia, to the Schedules to the Act.

All agreements specify 'entry into force' requirements, which stipulate that each party notify the other party by an exchange of diplomatic notes that all constitutional, legislative and any other matters that are necessary to be done have been done. An agreement will then come into operation on a date specified by reference to the exchange of diplomatic notes.

Regulations adding agreements to the Act need to be made and tabled in both Houses of the Parliament, and the period for disallowance of the Regulations needs to have elapsed, before the parties can exchange diplomatic notes as required under the entry into force provisions.

At the time the Amending Regulations were made, it was anticipated that the exchange of diplomatic notes would be able to occur to allow commencement on 1 January 2004. Although

Australia was in a position to proceed with the exchange of notes, both the Republic of Chile and the Republic of Croatia were unable to complete the necessary constitutional and legislative matters in time for the new Agreements to enter into force on time.

Accordingly, the proposed Regulations would omit the Agreements with Chile and Croatia from the Amending Regulations, leaving the Agreement with Slovenia to enter into force on 1 January 2004 as planned.

Re-insertion of the Agreement with Chile

The Chilean Government has now confirmed that the Agreement on social security with Australia could enter into force on 1 July 2004. The Agreement would coordinate the social security schemes of the countries to give better welfare protection for people who move between Australia and Chile.

When people live in more than one country during their working lives, they often find that when they claim a pension or benefit they do not have enough residence or contributions under a social security system to qualify for payment. A network of social security agreements has been set up within the international community to help alleviate this problem. A key element in these agreements is the undertaking by the partners to share the responsibility for providing adequate social security coverage and, as a consequence, the associated costs. Australia is a country with a large foreign-born population and it is appropriate for it to participate in this network of agreements.

When it comes into operation, the Agreement will enable people with contribution records in Chile, now living in Australia, to claim and qualify for part pensions from the Government of the Republic of Chile. Similarly, many former Australian residents living in Chile will be able to claim and qualify for a part Australian pension. The Agreement with the Republic of Chile also includes provisions modifying Australia's Superannuation Guarantee arrangements to avoid double coverage of Chilean employees seconded to work temporarily in Australia. Reciprocal exemptions are provided for Australian workers seconded to work temporarily in Chile.

In the Agreement with Chile, the entry into force provision is expressed so that, provided the exchange of diplomatic notes is completed (expected to take place in April 2004) the Agreement will enter into force on 1 July 2004.

The Croatian Government and the Australian Government are currently negotiating the commencement date of the Agreement on social security between these countries that was signed in Zagreb on 13 May 2003.

The Act specifies no conditions that need to be met before the power to make the proposed Regulations may be exercised.

The new social security Agreement with the Republic of Chile complements similar Agreements with Austria, Canada, Cyprus, Denmark, Germany, Ireland, Italy, The Netherlands, New Zealand, Malta, Portugal, Spain and the United States of America.

The proposed Regulations would commence as follows:

- Regulations 1 to 3, including the omission of the Agreements with Chile and Croatia - on gazettal; and
- Regulation 4 and Schedule 1, which restores the Agreement with Chile - on 1 July 2004.

Commencement on 1 July 2004 would satisfy the requirement of subsection 8(2) of the Act that Regulations not come into operation on a day earlier than the day agreements come into effect for Australia.

