

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 107

Issued by the Authority of the Minister for Families, Housing, Community Services and
Indigenous Affairs

Social Security (International Agreements) Act 1999

Legislative Instruments Act 2003

*Social Security (International Agreements) Act 1999 Amendment Regulations 2008 (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 or superannuation 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 Regulations is to insert an Agreement on Social Security between the Government of Australia and the Government of Japan (the Agreement) done at Canberra on 27 February 2007 as new Schedule 23 to the Act. The Agreement would coordinate the social security schemes of the two countries to give better welfare protection for people who move between Australia and Japan. The Government of Japan has confirmed that the Agreement could enter into force on 1 January 2009.

Australia and Japan will contribute fairly to the support of people who have spent part of their working lives in both countries. People will be able to move between Australia and Japan knowing that their pension rights are recognised in both countries. Generally speaking, people living in either country will be able to add periods of coverage to the pension system in Japan to periods of residence in Australia in order to qualify for pensions from Australia. Likewise, people living in either country will be able to add periods of working life residence in Australia, during which they were employed or self-employed, to the periods of coverage to the pension system in Japan in order to qualify for pensions from Japan.

The Agreement covers Australian Age Pensions and Japan Old-age Benefits. Once the Agreement starts, people of Age Pension or Old-age Benefits age will be able to claim an Age Pension or Old-age Benefit in either country and eligible pensioners or beneficiaries can continue to receive that pension or benefit indefinitely in either country as long as they remain otherwise qualified.

The Agreement also includes provisions covering Australia's Superannuation Guarantee scheme. These provisions will eliminate the need for compulsory contributions into both countries' systems in respect of the same work when employees are sent to work temporarily in the other country.

The Agreement complements similar agreements with Austria, Belgium, Canada, Chile, Croatia, Cyprus, Denmark, Germany, the Hellenic Republic, Ireland, Italy, the Republic of Korea, Malta, the Netherlands, New Zealand, Norway, Portugal, Slovenia, Spain, Switzerland and the United States of America.

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

The Agreement provides for entry into force on the first day of the first month following the month in which notes are exchanged by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to the Agreement have been finalised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. The Regulations commenced on the day after they were registered, with Schedule 1 containing the Agreement to commence on a day fixed by legislative instrument made by the Minister. Subregulation 2(2) provides that the legislative instrument made for the purposes of commencing Schedule 1 is not subject to the disallowance or sunset provisions of the *Legislative Instruments Act 2003*. The commencement provision satisfies the requirements of subsection 8(2) of the Act that regulations not come into operation on a day earlier than the day the relevant agreement comes into effect for Australia and also satisfies paragraph 12(1)(c) of the *Legislative Instruments Act 2003*.

Schedule 1 of the Regulations is proposed to specify that the commencement of the Agreement will be 1 January 2009 because both the Government of Australia and the Government of Japan are proposing to exchange diplomatic notes in December 2008 in accordance with the requirements of Article 30 of the Agreement in order to bring the Agreement into force on 1 January 2009.

Consultation

Various groups (listed below) were consulted by the Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Department of the Treasury as part of the treaty process.

FaHCSIA sent letters and an information sheet outlining the Agreement to each group on 17 April 2007 seeking their views and asking for a response by 12 May 2007.

No comments were received.

The Japanese community groups consulted were:

Agriculture & Livestock Industries Corporation	Japanese Society of Brisbane Inc
Electric Power Development Co Ltd	Japanese Society of Cairns
Japan Bank for International Cooperation	Japanese Society of Gold Coast Inc
The Japan Foundation	Japanese Society of Melbourne Inc
JETRO Melbourne	Japanese Society of Sydney Inc
JETRO Sydney	Japanese Society of Adelaide Inc
Japan International Cooperation Agency	Canberra Japan Club
Japan Local Government Centre	Japan Club of Queensland
Japan National Oil Corporation	Japan Club of Sydney Inc
Japan National Tourist Organisation	Japan Club of Tasmania
Japan Racing Association Sydney Office	Japan Club of Victoria Inc
Metal Mining Agency of Japan	Japan Club of Western Australia Inc
New Energy & Industrial Technology Development Organisation	National Federation of Australian-Japan Societies
Japanese Chamber of Commerce & Industry	Australian-Japan Society Adelaide
Japanese Cairns Association of Tourism Operators	Australian-Japan Society Canberra
JCCI Gold Coast	Australian-Japan Society Coffs Harbour
JCCI Melbourne	Australian-Japan Society Cowra
JCCI Perth Inc	Far North Queensland Australian-Japan Society
JCCI Sydney Inc	The Australian-Japan Society Geraldton
Sydney Japanese School	Australian-Japan Society Hobart
The Japanese School of Melbourne	The Australian-Japan Society Geraldton
The Japanese School of Perth	Australian-Japan Society Hobart

The welfare organisations consulted were:

ACROD (National Office)	ACT Multicultural Community Council
Association of Independent Retirees	Australian Council of Social Services
Combined Pensioners and Superannuants Association	COTA National Seniors
Council of Intellectual Disabilities Agencies	Ethnic Communities' Council of NSW
Ethnic Communities' Council of QLD	Ethnic Communities' Council of Victoria
Ethnic Communities' Council of West Australia	Federation of Ethnic Communities Council of Australia
Multicultural Council of NT Inc.	Multicultural Council of Tasmania
National Ethnic Disability Alliance	National Seniors Association
Physical Disability Council of Australia Ltd.	Southern Cross Group
Welfare Rights Group	Multicultural Communities' Council of SA

The State and Territory Governments consulted were:

ACT Chief Minister's Department
QLD Department of Premier and Cabinet
VIC Department of Premier and Cabinet
NT Department of Chief Minister
SA Department of Premier and Cabinet
TAS Department of Premier and Cabinet
WA Federal Affairs
NSW Intergovernmental & Regulatory Reform Branch

Treasury sent letters to the following organisations on 18 May 2007:

Institute of Chartered Accountants in Australia
Australian Chamber of Commerce and Industry
Industry Funds Forum Inc
A.C.T.U.
Council of Small Business Organisations of Australia
Association of Superannuation Funds of Australia
Investment and Financial Services Association
CPA Australia

Regulatory Impact Analysis

The Regulations does not require a Regulatory Impact Statement or a Business Cost Calculator Figure. The Regulations are not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.