

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 58

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 2009 (No. 1)

Section 25 of the *Social Security (International Agreements) Act 1999* (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.

In particular, subsection 7(1) of the Act provides that a Schedule to the Act setting out the terms of an agreement between Australia and another country, if the agreement relates to reciprocity in social security or superannuation matters, may be amended by regulations.

Subsection 7(2) of the Act provides that regulations made by virtue of subsection 7(1) must not come into operation on a day earlier than the day on which the amending agreement comes into force for Australia.

The purpose of the Regulations is to amend Schedule 15 of the Act, relating to the existing *Agreement on Social Security between the Government of Australia and the Government of the Republic of Chile* (the Agreement) which entered into force on 1 July 2004.

The amendment updates the Agreement in respect of new Chilean payments which began in December 2004. Further details of the Agreement and the amendment are attached.

All international 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 have been completed. An agreement would then come into operation on a date specified by reference to the exchange of diplomatic notes or instruments of ratification.

An exchange of diplomatic notes between Australia and Chile in December 2008 provided for entry into force of the amendment to the Agreement on the first day of the second month following the month of receipt of the last written notice from the Contracting Parties stating that all requirements for entry into force of this amendment have been complied with.

The making of the Regulations provides sufficient time for all necessary steps to be completed prior to the amendment to the Agreement entering into force in the second half of this year. Regulations amending agreements must be tabled in both Houses of the Parliament, and the period for disallowance of those regulations must have elapsed, before the parties can exchange the diplomatic notes as required.

Regulations 1 to 3 commenced on the day after they were registered. Schedule 1 to the Regulations will commence on a day to be fixed by a legislative instrument made by the Minister. The required legislative instrument will be made by the Minister shortly after the completion of an entry into force exchange of diplomatic notes between Australia and Chile as required under the amendment Exchange of Notes completed on 9 December 2008. The commencement legislative instrument will ensure that the Federal Register of Legislative Instruments contains a complete record in relation to the commencement of these regulations. The commencement date is proposed to be in the later half of this year because both the Government of Australia and the Government of the Republic of Chile need this time to complete the necessary constitutional, legislative and any other matters required.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. However, the Regulations also provide that the legislative instrument made by the Minister is not subject to disallowance or sunset provisions contained in the *Legislative Instruments Act 2003*. The exemptions from disallowance and sunset are considered appropriate given that the legislative instrument (which fixes the date of commencement) will be similar in effect to a commencement Proclamation for an Act of the Parliament because it is solely for the commencement of Schedule 1 of the Regulations. The legislative instrument is essentially spent once it is made. Since the *Legislative Instruments Act 2003* does not provide an exemption from disallowance or sunset specifically for instruments commencing regulations, the exemption must be specified. Therefore, the instrument would be prescribed for the purposes of the tables in subsections 44(2) and 54(2) of the *Legislative Instruments Act 2003* with the effect that it is not subject to the disallowance and sunset provisions of that Act.

The commencement provision also satisfies the requirements of subsection 7(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*.

Consultation

The amendments to paragraph 1 of Article 17 of the Agreement were minor technical amendments and no consultation with community groups or any other interested parties was required.

Regulatory Impact Analysis

The Regulations do 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.

The Agreement coordinates the social security schemes of Australia and Chile 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 parties 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.

The Agreement enables people with contribution records in Chile, now living in Australia, to claim and qualify for pensions from Chile. Similarly, many former Australian residents living in Chile will be able to claim and qualify for an Australian pension. The Agreement 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.

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

The Regulations insert an amendment to paragraph 1 of Article 17 to the Agreement within Schedule 15 to the Act.

The amendment to paragraph 1 of Article 17 to the Agreement done by exchange of diplomatic notes was completed on 9 December 2008 at Canberra. Schedule 15 would be amended to comprise two Parts as follows:

- Part A – the Agreement with Chile
- Part B – the amendment to paragraph 1 of Article 17 to the Agreement with Chile.

Before its amendment, paragraph 1 of Article 17 of the Agreement excluded payments made under Chilean Law 19.123 (mercy payments) and those made under Chilean Law 19.234 and its amendments (periodic mercy payments) from the Australian income test. These Chilean payments are known as the Chilean Pensions of Mercy (*Pensiones de Gracia*) which are payments established by law by the Chilean Government in the early 1990s to compensate and repair the moral suffering of the victims, and relatives of victims, of human rights abuse or political violence that occurred in Chile between 11 September 1973 and 10 March 1990.

The amendment to paragraph 1 of Article 17 to the Agreement makes some minor changes to the existing subparagraphs (a) and (b) (the mercy payments and the periodic mercy payments) and also inserts new subparagraphs (c) and (d) which, respectively, exclude from the Australian income test, the annual mercy pension made under Chilean law number 19.992 (a new payment enacted by the Chilean Government in December 2004 after the Agreement came into force) and any other payments of a similar character to those specified in subparagraphs (a), (b) and (c) where jointly approved in writing by the Competent Authorities.