

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No. 21**

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 2010 (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 8(1) 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 added to the Act by regulations.

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.

The purpose of the Regulations is to insert the *Agreement on Social Security between the Government of Australia and the Government of the Republic of Poland* (the Agreement) as new Schedule 25 to the Act.

Further details of the Agreement are attached.

All international agreements specify 'entry into force' requirements, which stipulate that each party notify the other party in writing of the completion of their respective statutory and constitutional procedures required for the entry into force. An agreement would then come into operation on a date specified by reference to the exchange of the notification of completion of all statutory and constitutional procedures.

The Government of the Republic of Poland has confirmed that the Agreement could enter into force on 1 October 2010.

The Agreement provides for entry into force on the first day of the third month following the month in which notification of the completion of all of the statutory and constitutional are exchanged by the Parties as are necessary to give effect to the Agreement.

The making of the Regulations provides sufficient time for all necessary steps to be completed prior to the Agreement entering into force. Regulations adding 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 finalise the notification to each other 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 for Families, Housing, Community Services and Indigenous Affairs (the Minister). The required legislative instrument will be made by the Minister shortly after the completion of an entry into force notification between Australia and Poland as required under Article 25 of the Agreement. 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 1 October 2010 because both the Government of Australia and the Government of the Republic of Poland need this time to complete the all of the necessary statutory and constitutional matters required.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the LI Act). However, the Regulations also provide that the legislative instrument made by the Minister is not subject to disallowance or sunset provisions contained in the LI Act. 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 LI Act 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 LI Act with the effect that it is not subject to the disallowance and sunset provisions of the LI Act.

The commencement provision also 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 LI Act.

## **Consultation**

Four separate 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 explaining the Agreement to each group on 9 October 2009 seeking their views and asking for a response by 30 October 2009. The text of the Agreement was also placed on the FaHCSIA Website.

The Polish community groups consulted by FaHCSIA were *The Polish Community Council of Australia and New Zealand* and the *Council of Polish Organisations in the ACT Inc.*

The welfare organisations consulted were:

ACT Multicultural Community Council	Association of Independent Retirees
Australian Council of Social Services	Combined Pensioners & Superannuants Association
COTA National Seniors	Council of Intellectual Disability Agencies
Ethnic Communities' Council of NSW	Ethnic Communities' Council of QLD
Ethnic Communities' Council of Victoria	Ethnic Communities' Council of West Australia
FECCA	Multicultural Communities' Council of SA
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 Centre	

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 The Cabinet Office, Intergovernmental & Regulatory Reform Branch

One formal response was received. The Tasmanian Department of Premier and Cabinet advised they consulted with relevant agencies and that Tasmania has no comments to make on the Agreement.

Treasury sent letters and an information sheet explaining the Agreement to each organisation listed below on 8 October 2009 seeking their views and asking for a response by 30 October 2009. No formal responses were received by Treasury.

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
National Institute of Accountants

## **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 have a low impact on business activity and will have no, or minimal, compliance costs or competition impact.

## **Attachment**

The Agreement, done at Warsaw on 7 October 2009, coordinates the social security schemes of the two countries to give better retirement income protection for people who move between Australia and Poland.

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 Poland, now living in Australia, to claim and qualify for pensions from Poland. Similarly, many former Australian residents living in Poland 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 Polish employees seconded to work temporarily in Australia. Reciprocal exemptions are provided for Australian workers seconded to work temporarily in Poland.

The Agreement complements similar agreements with Austria, Belgium, Canada, Chile, 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 the Agreement as new Schedule 25 to the Act.