

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2010 No. 247**

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. 2)*

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) 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 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 former Yugoslav Republic of Macedonia* (the FYROM Agreement) as new Schedule 26 to the Act; and
- insert the *Agreement on Social Security between the Australia and the Czech Republic* (the Czech Agreement) as new Schedule 27 to the Act.

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 FYROM Agreement, done at Canberra on 26 October 2009, coordinates the social security schemes of the two countries to give better retirement income protection for people who move between Australia and the former Yugoslav Republic of Macedonia.

The FYROM Agreement enables people with contribution records in the former Yugoslav Republic of Macedonia, now living in Australia, to claim and qualify for pensions from the former Yugoslav Republic of Macedonia. Similarly, many former Australian residents living in the former Yugoslav Republic of Macedonia will be able to claim and qualify for an Australian pension. The FYROM Agreement includes provisions modifying Australia's Superannuation Guarantee arrangements to avoid double coverage of the former Yugoslav Republic of Macedonia employees seconded to work temporarily in Australia. Reciprocal exemptions are provided for Australian workers seconded to work temporarily in the former Yugoslav Republic of Macedonia.

The Czech Agreement, done at Canberra on 16 September 2009, coordinates the social security schemes of the two countries to give better retirement income protection for people who move between Australia and the Czech Republic.

The Czech Agreement enables people with contribution records in the Czech Republic, now living in Australia, to claim and qualify for pensions from the Czech Republic. Similarly, many former Australian residents living in the Czech Republic will be able to claim and qualify for an Australian pension. The Czech Agreement includes provisions modifying Australia's Superannuation Guarantee arrangements to avoid double coverage of Czech Republic employees seconded to work temporarily in Australia. Reciprocal exemptions are provided for Australian workers seconded to work temporarily in the Czech Republic.

The FYROM Agreement and the Czech Agreement complement 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, Poland, Portugal, Slovenia, Spain, Switzerland and the United States of America.

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 FYROM Agreement provides for entry into force on the first day of the second month following the month in which notes are exchanged notifying of the completion of all internal constitutional and legislative conditions as are necessary have been fulfilled.

The Czech Agreement provides for entry into force on the first day of the third month following the month in which notes of ratification are exchanged notifying of the completion of all matters as are necessary have been finalised.

The making of the Regulations provides sufficient time for all necessary steps to be completed prior to each 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 and Schedule 2 to the Regulations which respectively contain the FYROM Agreement and the Czech Agreement will each 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 in respect of the FYROM Agreement will be made by the Minister shortly after the completion of an entry into force exchange of diplomatic notes between Australia and former Yugoslav Republic of Macedonia as required under Article 25 of the FYROM Agreement. The required legislative instrument in respect of the Czech Agreement will be made by the Minister shortly after the completion of an entry into force exchange of diplomatic notes between Australia and Czech Republic as required under Article 25 of the Czech Agreement.

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 and Schedule 2 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 for the FYROM Agreement**

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

FaHCSIA sent letters and an information sheet explaining the FYROM Agreement to each group on 1 February 2010 seeking their views and comments by 26 February 2010. The text of the FYROM Agreement was also placed on the FaHCSIA Website.

The community groups consulted by FaHCSIA were:

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| Macedonian Australian Welfare Association of Sydney, Rockdale, NSW    | Macedonian Australian Pensioners Association, Rockdale, NSW             |
| Macedonian Orthodox Community of Sydney, Rosebery, NSW                | Macedonian Community Welfare Association, St Albans, VIC                |
| Aegean Macedonian Association of Australia, Kingsgrove, NSW           | Macedonian Women's Pensioners Association of Footscray, Yarraville, VIC |
| Macedonian Pensioners Association, Broadmeadow, NSW                   | Macedonian Welfare Centre, Port Kembla, NSW                             |
| Macedonian Pensioners Association, Cabramatta, NSW                    | Australian Macedonian Pensioners Group, Reservoir, VIC                  |
| Macedonian Pensioners Association, Bankstown, NSW                     | Macedonian Community of WA (Inc.)                                       |
| Australian Macedonian Disability Pension Group "VARDAR", Preston, VIC |   |

The welfare organisations consulted were:

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|---|---|
| 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 WA               |
| FECCA                                   | Multicultural Communities' Council of SA        |
| Multicultural Council of NT Inc.        | Multicultural Council of Tasmania               |
| National Ethnic Disability Alliance     | National Seniors Association                    |
| Physical Disability Australia *         | Southern Cross Group                            |
| Welfare Rights Centre                   |   |

\* formerly Physical Disability Council of Australia Ltd

The State and Territory Governments consulted were:

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| 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 Department of Premier and Cabinet                                  |
| NSW The Cabinet Office, Inter-Governmental & Regulatory Reform Branch |

The ACT Chief Minister's Department and the Queensland Department of Premier and Cabinet responded. No concerns about the FYROM Agreement were received.

Treasury sent letters and an information sheet explaining the FYROM Agreement to each organisation listed below on 18 November 2009 seeking their views and asking for a response by 9 December 2009. One response was received from the ACTU supporting the FYROM Agreement.

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| 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                    |

### **Consultation for the Czech Agreement**

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

FaHCSIA sent letters and an information sheet explaining the Czech Agreement to each group on 18 September 2009 seeking their views and comments by 23 October 2009. The text of the Czech Agreement was also placed on the FaHCSIA Website.

The community groups consulted by FaHCSIA were:

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| Beseda, the Czechoslovak Australian Association of Canberra and Region, Inc. | Sokol Sydney Gymnastic Association, Ltd.               |
| Czechoslovakian Country Club, Kemp Creek, NSW                                | Czechoslovak Ex-servicemen Association of NSW          |
| Czechoslovak Ex-Servicemen's Association, South Pacific Executive Committee  | Czechoslovak Ex-servicemen's Association, NSW Division |
| Sokol Melbourne, Inc. National House of Czech and Slovaks                    | Czechoslovak Ex-servicemen Association of Victoria     |
| Czechoslovakian Club in Queensland, Inc.                                     | Czech Association of Australia, Inc.                   |
| The Czech and Slovak Association of Tasmania, Inc.                           | The Czech and Slovak Association in WA, Inc.           |
| Czechoslovak Club in SA, Inc.  |  |

No responses were received.

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 WA               |
| FECCA                                   | Multicultural Communities' Council of SA        |
| Multicultural Council of NT Inc         | Multicultural Council of Tasmania               |
| National Ethnic Disability Alliance     | National Seniors Association                    |
| Physical Disability Australia *         | Southern Cross Group                            |
| Welfare Rights Centre                   | National Disability Services                    |

\* formerly Physical Disability Council of Australia Ltd

The State and Territory Governments consulted were:

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| 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 Department of Premier and Cabinet                                  |
| NSW The Cabinet Office, Inter-Governmental & Regulatory Reform Branch |

One response was received from the Government of Western Australia Department of the Premier and Cabinet with no concerns raised.

Treasury sent letters and an information sheet explaining the Czech Agreement to each organisation listed below on 28 September 2009 seeking their views and asking for a response by 23 October 2009. No responses were received.

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| 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.