

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2011 No. 137**

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 2011 (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 the regulations may make provision amending a Schedule to the Act that sets out the terms of an agreement between Australia and another country that relates to reciprocity in social security or superannuation matters, so as to set out in the Schedule the text of an agreement that amends, or otherwise affects the operations of, another agreement set out in the Schedule.

Subsection 7(2) provides that the regulations when made 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 10 to the Act, relating to the existing Agreement between Australia and the Republic of Austria on Social Security (the Agreement) which entered into force on 1 December 1992 by inserting the Second Protocol to the Agreement (the Second Protocol) as new Part C of Schedule 10 to the Act immediately after Part B.

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, done at Canberra on 1 April 1992, coordinates the social security schemes of Australia and Austria to give better welfare protection for people who move between Australia and Austria.

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

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 Second Protocol to the Agreement provides for entry into force on the first day of the third month following the month in which notes are exchanged through the diplomatic channel notifying that all matters as are necessary to give effect to the Second Protocol 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 to the Regulations, which contains the Second Protocol, 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 in respect of the Second Protocol to the Agreement will be made by the Minister shortly after the completion of an entry into force exchange of diplomatic notes between Australia and Republic of Austria as required under paragraph 1 of Article IV of the Second Protocol.

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 7(2) of the Act that regulations not come into operation on a day earlier than the day the relevant amending agreement comes into effect for Australia and also satisfies paragraph 12(1)(c) of the LI Act.

### **Consultation**

Treasury consulted a number of industry groups and all state and territory governments as part of the treaty process. Letters and an information sheet outlining the changes to the Agreement were sent to each organisation on 14 April 2010 seeking their views and asking for a response by 7 May 2010. No formal responses were received.

The organisations Treasury consulted were:

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

The State and Territory Governments the Department of Families, Housing, Community Services and Indigenous Affairs 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

### **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.