

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 154

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. 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 between Australia and the Slovak Republic on Social Security* (the Agreement) as new Schedule 28 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 Agreement, done at New York on 21 September 2010, coordinates the social security schemes of the two countries to give better retirement income protection for people who move between Australia and the Slovak Republic.

The Agreement enables people with contribution records in the Slovak Republic, now living in Australia, to claim and qualify for pensions from the Slovak Republic. Similarly, former Australian residents living in the Slovak Republic 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 Slovak Republic employees seconded to work temporarily in Australia. Reciprocal exemptions are provided for Australian workers seconded to work temporarily in the Slovak Republic.

The Agreement complements similar agreements with Austria, Belgium, Canada, Chile, Croatia, Cyprus, the Czech Republic, Denmark, Finland, Germany, Greece, Ireland, Italy, Japan, the Republic of Korea, the former Yugoslav Republic of Macedonia, 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 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 each other that all matters as are necessary to give effect to the Agreement have been finalised.

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 exchange of diplomatic notes 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 text of the Agreement 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 exchange of diplomatic notes between Australia and the Slovak Republic as required under Article 27 of the 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 to 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

The following 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.

On 25 October 2010, FaHCSIA wrote to 8 Slovak community groups and 16 welfare groups across Australia, in addition to all State and Territory Governments, to provide information and seek their views and comments by 1 December 2010. The Agreement text and information about the Agreement is available on FaHCSIA's website.

The community groups consulted by FaHCSIA were:

Beseda - The Czechoslovak Australian Association of Canberra and Region, Inc. ACT	Czechoslovakian Club in Queensland, Inc.
The Czech and Slovak Association in WA, Inc.	Czechoslovak Club in SA, Inc.
The Czech and Slovak Association of Tasmania, Inc.	Slovak. Association of Qld Inc.
Australian Slovak Association in New South Wales	Slovak Catholic Mission of St. Cyrilus and Methodius NSW

The welfare organisations consulted were:

Ethnic Communities Council of QLD	ACT Multicultural Community Council
Ethnic Communities Council of WA	Australian Council of Social Services
Multicultural Council of NT Inc	Southern Cross Group
Welfare Rights Centre	Ethnic Communities Council of NSW
Multicultural Communities Council of SA	Ethnic Communities Council of Victoria
Multicultural Council of Tasmania	FECCA
National Seniors Association	COTA National Seniors
Combined Pensioners and Superannuants Association	Association of Independent Retirees

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

No concerns or comments about the Agreement were received by FaHCSIA.

On 21 October 2010, the Department of the Treasury wrote to the organisations listed below to seek their views by 18 November 2010.

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

No concerns or comments about the Agreement were received the Department of the Treasury.

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.