

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 54

Issued by the Authority of the Minister for Families, Community Services and
Indigenous Affairs

Social Security (International Agreements) Act 1999

Legislative Instruments Act 2003

Social Security (International Agreements) Amendment Regulation 2012 (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) 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 Regulation is to insert the *Agreement between Australia and the Republic of Latvia on Social Security* (the Agreement) as new Schedule 30 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 Riga on 7 September 2011, coordinates the social security schemes of the two countries to give better retirement income protection for people who move between Australia and the Republic of Latvia.

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

The Agreement complements similar agreements with Austria, Belgium, Canada, Chile, Croatia, Cyprus, the Czech Republic, Denmark, Finland, Germany, Greece, Republic of Hungary, Ireland, Italy, Japan, the Republic of Korea, the former Yugoslav Republic of Macedonia, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, the Slovak Republic, 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 second month following the month in which written notification are exchanged by the Parties through the diplomatic channel notifying each other that all matters as are necessary to give effect to the Agreement have been satisfied.

The making of the Regulation 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.

Sections 1 to 3 commenced on the day after they were registered. Schedule 1 to the Regulation 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, 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 Republic of Latvia as required under Article 22 of the Agreement.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the LI Act). However, the Regulation also provides that the legislative instrument made by the Minister is not subject to the 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 Regulation. 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 Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA) and the Department of the Treasury consulted with relevant community groups, welfare organisations, State and Territory Governments, employer groups and the superannuation industry (all listed below) as part of the treaty process.

On 26 September 2011 FaHCSIA wrote to the President and seven Vice Presidents of the Latvian Federation of Australia and New Zealand and 18 welfare groups across Australia, in addition to all State and Territory Governments, to provide information and seek their views and comments on the Agreement by 31 October 2011. The Agreement text and information about the Agreement are available on FaHCSIA's website.

Welfare and other 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	(COTA) National Seniors
National Ethnic Disability Alliance	Association of Independent Retirees
Physical Disability Council of Australia Ltd	National Disability Services
Combined Pensioners and Superannuants Association	Federation of Ethnic Communities' Councils of Australia (FECCA)

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 responses about the Agreement were received by FaHCSIA.

On 22 September 2011, the Department of the Treasury wrote to the organisations listed below to seek their views and asking for a response by 28 October 2011.

Institute of Chartered Accountants in Australia
Australian Chamber of Commerce and Industry
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

One response supporting the double liability aspects of the Agreement was received by 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.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The Legislative Instrument inserts the Agreement on Social Security made on 7 September 2011 between Australia and the Republic of Latvia as new Schedule 30 to the Act.

Human rights implications

The Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

The Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Minister for Families, Community Services and Indigenous Affairs and
Minister for Disability Reform, the Hon Jenny Macklin MP**