

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 89, 2015**

Issued by the Authority of the Minister for Social Services

*Social Security (International Agreements) Act 1999*

*Social Security (International Agreements) Amendment (Republic of India)  
Regulation 2015*

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 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 the 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 add new Schedule 31 to the Act setting out the terms of the *Agreement between Australia and the Republic of India on Social Security* (the Agreement).

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 18 November 2014, 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 India.

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

The Agreement complements similar agreements Australia has with Austria, Belgium, Canada, Chile, Croatia, Cyprus, the Czech Republic, Denmark, Finland, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea, Latvia, 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 third month following the month in which written notifications are exchanged by the Parties through the diplomatic channel notifying each other that all matters 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.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (the LI Act).

Sections 1 to 5 of the Regulation commence on the day after they are registered. Schedule 1 to the Regulation which contains the text of the Agreement will commence on a day to be fixed by the Minister for Social Services (the Minister) by notice in the Gazette. The required Gazette notice 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 India as required under Article 25 of the Agreement.

The commencement provision in section 2 of the Regulation 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.

The commencement provision in section 2 of the Regulation does not include a mechanism by which the Regulation will commence or be repealed if the Minister has not made a notice in the Gazette by a certain date. This is to allow time for all matters necessary to give effect to the Agreement to be finalised in accordance with Article 25 of the Agreement.

Section 4 of the Regulation provides that the Regulation will be repealed the day after Schedule 1 to the Regulation commences. Part 5A of the LI Act provides for the automatic repeal of spent legislative instruments, but only those whose only legal effect is to amend or repeal one or more other legislative instruments. Part 5A of the LI Act does not operate to automatically repeal spent legislative instruments which amend or repeal Acts. For this reason, to ensure the Regulation

does not remain in force once spent, section 4 of the Regulation has been included to ensure that the Regulation will be repealed once Schedule 1 to the Regulation commences.

## Consultation

The Department of Social Services (DSS) 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 27 November 2014, DSS wrote to 27 Indian community groups in Australia and 16 welfare groups across Australia, in addition to all State and Territory Governments, to provide information and seek their views and comments on the proposed Agreement.

Welfare and other organisations consulted were:

Ethnic Communities Council of QLD	ACT Multicultural Community Council
Ethnic Communities Council of WA	Australian Council of Social Service
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	Council on the Ageing Australia
Federation of Ethnic Communities' Councils of Australia (FECCA)	Association of Independent Retirees
Combined Pensioners and Superannuants' Association	National Seniors Association

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 DSS.

On 27 November 2014 the Department of the Treasury wrote to the organisations listed below seeking their views on the Agreement.

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
Financial Services Council
CPA Australia
Institute of Public Accountants

Two responses supporting the avoidance of double liability aspects of the proposed Agreement and one response noting that the avoidance of double liability aspects of the Agreement did not raise any concerns were received.

### **Regulatory Impact Analysis**

Treasury also consulted with the Office of Best Practice Regulation ('OBPR') in relation to the requirement for a Regulation Impact Statement. OBPR advised DSS that the regulatory impacts of the Agreement with India are minor given that it:

- (a) reduces the compliance burden and costs for Australian and Indian employers by removing the obligation to pay compulsory contributions into both countries' systems; and
- (b) lowers the regulatory burden on Australian superannuation funds as they will not need to process as many superannuation payments, including 'departing Australia super payments' for Indian employees working temporarily in Australia and unclaimed superannuation.

## **Statement of Compatibility with Human Rights**

### ***Social Security (International Agreements) Amendment (Republic of India) Regulation 2015***

#### ***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 adds new Schedule 31 containing the terms of the Agreement on Social Security made on 18 November 2014 between Australia and the Republic of India (the Agreement) to the *Social Security (International Agreements) Act 1999*.

The Agreement coordinates the social security systems of Australia and the Republic of India to give better retirement income protection for people who move between the two countries.

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

#### ***Human rights implications***

The Legislative Instrument engages the right to social security.

#### ***The right to social security***

This Legislative Instrument supports the right to social security as it allows people in both Australia and the Republic of India to access social security assistance that would not have otherwise been available to them.

#### ***Conclusion***

The Legislative Instrument supports the right to social security and is compatible with human rights.

**Minister for Social Services, the Hon Scott Morrison MP**