

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Social Services

*Social Security (International Agreements) Act 1999*

*Social Security (International Agreements) Amendment (Amendment of New Zealand Agreement) Regulations 2017*

The *Social Security (International Agreements) Act 1999* (the Act) gives effect to any social security agreement between Australia and another country relating to reciprocity in social security or superannuation matters if the text of the agreement is set out in a Schedule to the Act. Section 6 of the Act provides that the provisions of a scheduled international social security agreement have effect despite anything in the social security law. An agreement is a scheduled international agreement if the text of the agreement is set out in a Schedule to the Act.

Section 25 of 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.

Subsection 7(1) of the Act, provides that the regulations may amend a Schedule to the Act that sets out the text of an agreement between Australia and another country.

Due to delays in implementing New Zealand's new social security legislation, references to that legislation in the *Agreement on Social Security between the Government of Australia and the Government of New Zealand*, done at Wellington on 8 December 2016 (the Agreement) and the *Social Security (International Agreements) Amendment (New Zealand) Regulations 2017* currently before parliament are now incorrect. The incorrect legislative references in the Agreement, and a minor editorial change, were corrected by an Exchange of Notes of 24 March 2017 and 11 April 2017 (the Exchange of Notes). The proposed regulations are required to give effect to the changes to the Agreement made by the Exchange of Notes.

The proposed Social Security (International Agreements) Amendment (Amendment of New Zealand) Regulations 2017 (the proposed Regulations) are required to give effect to the changes to the Agreement made by the Exchange of Notes.

The purpose of the proposed Regulations is to amend the new Schedule 3 (the Agreement made at Wellington on 8 December 2016) by adding the Exchange of Notes of 24 March 2017 and 11 April 2017 as Part B to Schedule 3.

References to any New Zealand laws, including the New Zealand social security law do not affect the operation of Australia's social security law. The proposed Regulations do not therefore apply, adopt or incorporate New Zealand social security law for the purpose of section 14 of the *Legislation Act 2003*.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Sections 1 to 5 of the Regulations commence on the day after the Regulations are registered. Schedule 1 to the Regulations, which contains the Exchange of Notes between the Governments of Australia and New Zealand on 24 March and 11 April 2017 commences immediately after the commencement of Schedule 1 to the Amendment Regulations (which commences on the day the Agreement enters into force for Australia).

The commencement provision in section 2 of the Regulations 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 agreement comes into effect for Australia.

In line with Article 27 of the Agreement, the commencement provision in section 2 of the Regulations does not include a mechanism by which the Regulations will automatically commence or be repealed if the Agreement does not enter into force for Australia. Article 27 of the Agreement anticipates a commencement date of 1 July 2017, but commencement is not time limited. The Agreement could commence at any time after 1 July 2017 provided that notes stating that all matters necessary to give effect to the Agreement have been completed have been exchanged through the diplomatic channel.

Section 3 of the proposed Regulations specifies that the Regulations are made under section 7 of the Act.

Section 4 of the Regulations provides that the Regulations will be repealed the day after Schedule 1 to the Regulations commences. Part 3 of Chapter 3 of the *Legislation Act 2003* (the Legislation 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 3 of Chapter 3 of the Legislation Act does not operate to automatically repeal spent legislative instruments which amend or repeal Acts. For this reason, to ensure the Regulations do not remain in force once spent, section 4 has been included to ensure that the Regulations will be repealed once Schedule 1 to the Regulations commences.

Section 5 of the Regulations provides that legislation specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 of the proposed Regulations sets out the amendments to Schedule 3 of the Act. Item 1 inserts the heading 'Part A' after the Schedule heading to Schedule 3 of the Act. Item 2 inserts the Exchange of Notes under Part B at the end of Schedule 3 of the Act.

## **Consultation**

The Office of International Law, Attorney-General's Department, the Australian Government Solicitor and the Office of Parliamentary Counsel were consulted regarding the corrections required for the Exchange of Notes in relation to the preparation of the Regulations.

## **Regulatory Impact Analysis**

The Department of Social Services consulted with the Office of Best Practice Regulation (OBPR) in relation to the requirement for a Regulation Impact Statement. OBPR advised that the regulatory impacts of the Agreement are nil and the RIS requirements have been met (reference 16543). An additional Regulation Impact Statement was not sought from OBPR for the Regulations as the amendments have no regulatory impacts.

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

### ***Social Security (International Agreements) Amendment (Amendment of New Zealand) Regulations 2017***

*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**

This Legislative Instrument amends the new Schedule 3 (the Agreement made at Wellington on 8 December 2016) by inserting the heading ‘Part A’ after the Schedule heading to Schedule 3 of the Act and inserting the Exchange of Notes of 24 March 2017 and 11 April 2017 as Part B to the end of Schedule 3 of the Act.

The Exchange of Notes between the Government of New Zealand and the Government of Australia on 24 March 2017 and 11 April 2017 respectively corrects errors in the *Agreement on Social Security between the Government of Australia and the Government of New Zealand* (the Agreement) made at Wellington on 8 December 2016.

The Exchange of Notes corrects references to the *Social Security Act 2016* by replacing the reference to the year ‘2016’ with the year ‘1964’ in article 1(c) and 1(n)(ii) so that both references will read the *Social Security Act 1964* in the Agreement.

The Exchange of Notes also corrects article 6 of the Agreement by inserting in paragraph 5, after the words ‘payable to’, the words ‘a person in’.

The Exchange of Notes does not alter the overall purpose of the Agreement.

#### **Human rights implications**

This Legislative Instrument has considered the human rights implications particularly with reference to the right to social security as contained within Article 9 of the International Covenant on Economic, Social and Cultural Rights.

This Legislative Instrument supports the right to social security as it allows people in both Australia and New Zealand 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. To the extent that this human rights obligation is engaged, it is reasonable, proportionate and transparent in achieving its objectives.

**The Department of Social Services**