

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 21

Issued by the Authority of the Minister for Family and Community Services

Social Security (International Agreements) Act 1999

*Social Security (International Agreements) Act 1999 Amendment
Regulations 2005 (No. 1)*

Subsection 8(1) of the *Social Security (International Agreements) Act 1999* (the Act) provides that a Schedule setting out the terms of an agreement between Australia and another country may be added to the Act by regulations, if the agreement relates to reciprocity in social security or superannuation matters.

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.

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.

The purpose of the Regulations is to insert the Agreement on Social Security between the Government of Australia and the Government of Malta done at Malta on 16 June 2004 (the new Agreement) as Schedule 6 to the Act, replacing the current Schedule 6 (the Agreement on Social Security between Australia and Malta done at Canberra on 15 August 1990). The new Agreement would coordinate the social security schemes of the countries to give better welfare protection for people who move between Australia and Malta. The Maltese Government has confirmed that the new Agreement could enter into force on 1 July 2005.

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 partners 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 a growing internationally mobile Australian-born population, and it is appropriate for it to participate in this network of agreements.

The new Agreement will enable people with contribution records in Malta, and living in Australia, to claim and qualify for part pensions from the Government of Malta. Similarly, many former Australian residents living in Malta will be able to claim and qualify for a part Australian pension. The current Agreement with Malta has been in force since 1 July 1991. It has worked well for the last 13 years but substantial changes to both countries' social security systems have necessitated the updating of that Agreement. Australia was keen to revise the Agreement because it

was out of step with the Australian Government's policy on disability support pensions. The change is in line with the approach taken in all new agreements.

The new Agreement on Social Security with Malta complements similar agreements with Austria, Belgium, Canada, Chile, Croatia, Cyprus, Denmark, Germany, Ireland, Italy, The Netherlands, New Zealand, Portugal, Slovenia, Spain and the United States of America.

All international intergovernmental agreements specify 'entry into force' requirements, which stipulate that each party notify the other party by an exchange of diplomatic notes that all constitutional, legislative and any other matters that are necessary to be done have been done. An agreement will then come into operation on a date specified by reference to the exchange of diplomatic notes.

The new Agreement with Malta provides for entry into force on the first day of the month after the exchange of notes. The exchange of diplomatic notes is expected to take place in June 2005, with the effect that the new Agreement would enter into force on 1 July 2005.

In the Agreement with Malta, the entry into force provision is expressed so that, provided the exchange of diplomatic notes is completed the Agreement will enter into force on 1 July 2005. The exchange of diplomatic notes is expected to take place in June 2005.

The Act specifies no conditions that need to be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Three separate groups (listed below) were contacted as part of the treaty process. These were Maltese community organisations (12), welfare organisations (21) and all State and Territory Governments.

Letters and an information sheet outlining the changes to the Agreement were sent to each group in mid-November 2004 seeking their views and asking for a response by 10 December 2004.

The Western Australian and the Queensland Government formally responded and did not have any comments. No responses were received from any of the other groups contacted.

The Maltese Community Organisations consulted were:

Gold Coast Phoenician Multicultural Association Mackay Maltese Club Inc	La Vallete Social Centre (NSW) Maltese Association of Western Australia Inc
Maltese Australian Association of Queensland Inc	Maltese Australian Gold Coast Association Inc

Maltese Australian of Canberra
and Queanbeyan Inc
Maltese Community Council of
South Australia
Maltese Cultural Association of
Victoria

Maltese Community Council of
New South Wales
Maltese Community Council of
Victoria Inc
Maltese Professional & Business
Association of Western Australia

The welfare organisations consulted were:

ACROD (National Office)

ACT Multicultural Community
Council

Association of Independent
Retirees
Australian Council of Social
Service (ACOSS)

Combined Pensioners and
Superannuants Association
COTA National Seniors

Council of Intellectual Disability
Agencies
Council of the Ageing (Australia)

Ethnic Communities' Council of
NSW
Ethnic Communities' Council of
QLD
Ethnic Communities' Council of
Victoria

Ethnic Communities' Council of
Western Australia
Federation of Ethnic
Communities Councils of
Australia (FECCA)
Multicultural Communities
Council of SA
Multicultural Council of NT

Multicultural Council of
Tasmania
National Ethnic Disability
Alliance
National Seniors Association

Physical Disability Council of
Australia Ltd
Southern Cross Group

Welfare Rights Centre

The Regulations will commence on 1 July 2005. This commencement date satisfies the requirement 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.