

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 265**

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 2008  
(No. 2)*

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 the Republic of Finland* (the Agreement) done at Helsinki on 10 September 2008 as new Schedule 24 to the Act.

The Agreement, done at Helsinki on 10 September 2008, coordinates the social security schemes of the two countries to give better retirement income protection for people who move between Australia and Finland. The Government of the Republic of Finland has confirmed that the Agreement could enter into force on 1 July 2009.

Australia and Finland will contribute fairly to the support of people who have spent part of their working lives in both countries. People will be able to move between Australia and Finland knowing that their pension rights are recognised in both countries. Generally speaking, people living in either country will be able to add periods of coverage to the pension system in Finland to periods of residence in Australia in order to qualify for pensions from Australia. Likewise, entitled people living in either country will be able to receive Finnish National Pension and also be able to add periods of working life residence in Australia, during which they were employed or self-employed, to the periods of coverage to the pension system in Finland in order to qualify for Earnings-Related pensions from Finland.

The Agreement covers Australian Age Pensions and the Finnish Age Pensions under the National Pensions Act and the Earnings-Related Pension Scheme. Once the Agreement starts, people of Age Pension age will be able to claim an Australian Age Pension and/or Finnish Age Pensions under the National Pensions Act and the Earnings-Related Pension Scheme. Eligible pensioners can continue to receive these pensions indefinitely in either country as long as they remain otherwise qualified.

The Agreement also includes provisions covering Australia's Superannuation Guarantee scheme. These provisions will eliminate the need for compulsory contributions into both countries' systems in respect of the same work when employees are sent to work temporarily in the other country.

The Agreement complements similar agreements with Austria, Belgium, Canada, Chile, Croatia, Cyprus, Denmark, Germany, the Hellenic Republic, Ireland, Italy, Japan, the Republic of Korea, Malta, the Netherlands, New Zealand, Norway, Portugal, Slovenia, Spain, Switzerland 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 or by ratification that all constitutional, legislative and any other matters that are necessary to be done have been done. An agreement would then come into operation on a date specified by reference to the exchange of diplomatic notes or instruments of ratification.

The Agreement provides for entry into force on the first day of the second month following the month in which notes are exchanged by the Parties through the diplomatic channel notifying each other that all constitutional or legislative matters as are necessary to give effect to the Agreement have been finalised.

Regulations 1 to 3 commenced on the day after they were registered. Schedule 1 to the Regulations would commence on a day fixed by legislative instrument made by the Minister. The required legislative instrument would be made shortly after the completion of the exchange of diplomatic notes between Australia and Finland (Article 25) and will ensure that the Federal Register of Legislative Instruments contains a complete record in relation to the commencement of these regulations. The commencement date is proposed to be 1 July 2009 because both the Government of Australia and the Government of the Republic of Finland are intending to exchange diplomatic notes in May 2009.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. However, the Regulations also provide that the legislative instrument made by the Minister is not subject to disallowance or sunset provisions contained in the *Legislative Instruments Act 2003*. 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 of the Regulations. The legislative instrument is essentially spent once it is made. Since the *Legislative Instruments Act 2003* 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 *Legislative Instruments Act 2003* with the effect that it is not subject to the disallowance and sunset provisions of that 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 *Legislative Instruments Act 2003*.

Schedule 1 of the Regulations is proposed to specify that the commencement of the Agreement will be 1 July 2009 because both the Government of Australia and the Government of the Republic of Finland are intending to exchange diplomatic notes in May 2009 in accordance with the requirements of Article 25 of the Agreement in order to bring the Agreement into force on 1 July 2009.

### **Consultation**

Four separate 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.

FaHCSIA sent letters and an information sheet explaining the Agreement to each group on 18 August 2008 seeking their views and asking for a response by 28 August 2008. Finland agreed to FaHCSIA providing copies of the Agreement text before its signature to interested community groups on request. The text of the Agreement was also placed on the FaHCSIA Website.

One formal response was received. The Southern Cross Group, representing expatriate Australians worldwide, advised they were pleased to learn that the Agreement will be signed soon and they passed on the FaHCSIA letter to a number of Australians living in Finland in their network.

The Finnish community groups consulted were:

Australasian Federation of Finnish Societies and Clubs Inc.	Adelaide Finnish Society
Brisbane Finnish Society	Canberra Finnish Society Inc.
Finnish Society of Sydney Inc.	Gold Coast Finnish Society
Gold Coast Finnish Sports Club Inc.	Gosford Finnish Society
Melbourne Finnish Society	Mt Isa Finnish Society
Perth Finnish Golf Club	Sunshine Coast Finnish Social Club
Townsville Finnish Sport Club	Tully Finnish Society
West Sydney Finnish Club	Wollongong Region Finnish Society
Lions Club of Brisbane Finlandia Inc.	Self-Help Society (Sydney)
Finnish War Veterans Australia Inc	

The welfare organisations consulted were:

ACROD (National Office)	ACT Multicultural Community Council
Association of Independent Retirees	Australian Council of Social Services
Combined Pensioners & Superannuants Association	COTA National Seniors
Council of Intellectual Disabilities Agencies	Ethnic Communities' Council of NSW
Ethnic Communities' Council of QLD	Ethnic Communities' Council of Victoria
Ethnic Communities' Council of West Australia	FECCA
Multicultural Council of NT Inc	Multicultural Council of Tasmania
National Ethnic Disability Alliance	National Seniors Association
Physical Disability Council of Australia Ltd	Southern Cross Group
Welfare Rights Centre	Multicultural Communities' Council of SA

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 Federal Affairs
NSW Intergovernmental & Regulatory Reform Branch

Treasury sent letters and an information sheet explaining the Agreement to each organisation on 20 August 2008 seeking their views and asking for a response by 28 August 2008. No formal responses were received by Treasury.

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

### **Regulatory Impact Analysis**

The Regulations does not require a Regulatory Impact Statement or a Business Cost Calculator Figure. The Regulations are not regulatory in nature, will not impact on business activity and will have no, or minimal, compliance costs or competition impact.