

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Social Services

Social Security (International Agreements) Act 1999

Social Security (International Agreements) Amendment (Republic of Serbia) Regulations 2023

Purpose

The purpose of the *Social Security (International Agreements) Amendment (Republic of Serbia) Regulations 2023* (the Regulations) is to add Schedule 33 to the *Social Security (International Agreements) Act 1999* (the Act), setting out the terms of the *Agreement between Australia and the Republic of Serbia on Social Security* (the Agreement).

The Agreement enables Australia and the Republic of Serbia to share the responsibility and cost of providing increased social security coverage for eligible people who have moved between the two countries.

Background

Australia has established a network of social security agreements with the international community. A key element of these agreements is the undertaking by each country to share the responsibility and costs associated with providing social security coverage.

Australia currently has 31 social security agreements with other countries, which are set out in individual Schedules to the Act.

Section 8 of the Act provides that a new Schedule setting out the terms of an agreement between Australia and another country may be added to the Act by regulations.

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.

Agreement between Australia and Republic of Serbia

The Agreement, signed at Belgrade on 20 January 2023, enables Australia and the Republic of Serbia to provide increased social security coverage for current and former residents of both countries.

The Agreement enables people in either country to combine periods of residence in Australia with periods of contribution in Serbia to meet the minimum 10-year residence requirement for the Australian Age Pension and/or the minimum contribution requirements for Serbian pensions. Eligible individuals will also be able to lodge a claim for a pension in either Australia or Serbia.

The Agreement also modifies Australia's Superannuation Guarantee arrangements to exempt Australian employers whose workers are temporarily seconded to Serbia from having to pay compulsory Serbian insurance contributions in addition to the Australian superannuation contributions they already pay. Similarly, Serbian employers will not have to pay superannuation contributions in Australia for workers seconded to Australia if they are already paying insurance contributions in Serbia.

The Agreement complements similar agreements Australia has with Austria, Belgium, Canada, Chile, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, Germany, Greece, Hungary, Ireland, India, Italy, Japan, Korea, Latvia, Malta, the Netherlands, New Zealand, North Macedonia, Norway, Poland, Portugal, the Slovak Republic, Slovenia, Spain, Switzerland and the United States of America.

Entry Into Force

All Australian social security 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.

Article 24 of the Agreement provides for entry into force on the first day of the third month following the month in which written notes are exchanged by the Parties through the diplomatic channel notifying each other that all matters necessary to give effect to the Agreement have been finalised.

Regulations adding an agreement 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 to bring the agreement into force.

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

Consultation

As part of the National Interest Analysis for the Agreement, the Department of Social Services (DSS) and the Department of the Treasury consulted with a range of stakeholders, including state and territory governments, welfare, seniors and multicultural organisations, the superannuation industry, business groups, and relevant community groups, in relation to Australia's proposed entry into the Agreement.

The consultation outlined key aspects of the proposed Agreement, provided a link to view both the English and Serbian language versions of the proposed Agreement, and invited stakeholder views and comments.

The state and territory government organisations consulted were:

- ACT Chief Minister, Treasury and Economic Development Directorate
- NSW Department of Premier and Cabinet
- NT Department of the Chief Minister and Cabinet
- QLD Department of the Premier and Cabinet
- SA Department of the Premier and Cabinet
- TAS Department of Premier and Cabinet
- VIC Department of Premier and Cabinet
- WA Department of the Premier and Cabinet

One response was received to this consultation, which noted no concerns.

Welfare, seniors and multicultural organisations consulted by DSS were:

- Federation of Ethnic Communities' Councils of Australia
- Ethnic Communities Council of Queensland
- Ethnic Communities' Council of NSW
- Ethnic Communities' Council of Victoria
- Multicultural Communities Council of South Australia
- Multicultural Council of Tasmania
- Australian Council of Social Service
- Economic Justice Australia
- National Seniors Association
- COTA Australia
- Association of Independent Retirees
- Combined Pensioners and Superannuants Association

Three responses were received to this consultation, all of which welcomed the proposed Agreement.

Superannuation and financial services, organisations, business and union groups consulted were:

- Australian Institute of Superannuation Trustees
- Association of Superannuation Funds of Australia
- Financial Services Council
- Chartered Accountants Australia & New Zealand
- CPA Australia
- Institute of Public Accountants
- Australian Chamber of Commerce and Industry
- Council of Small Business Organisations Australia
- Australian Council of Trade Unions

One response was received to this consultation, which raised no concerns with the proposed Agreement.

The Serbian community groups consulted were:

- Serbian Council of Australia
- Serbian Community Association of Australia
- Australian Serbian Commerce Chamber
- Australian Serbian Organisation of Professionals
- Tesla Forum of W.A. Inc.

Three responses were received to this consultation, which all welcomed the proposed Agreement.

Impact Analysis

DSS consulted with the Office of Impact Analysis (OIA) in relation to the requirement for an Impact Analysis. OIA considers the Regulations are unlikely to have more than minor regulatory impact and, as such, the preparation of an Impact Analysis is not required (OIA23-04011).

Explanation of the Provisions

Section 1 provides that the name of the Regulations is the *Social Security (International Agreements) Amendment (Republic of Serbia) Regulations 2023*.

In **section 2**, table item 1 provides that sections 1 to 5 of the Regulations commence on the day after the Regulations are registered on the Federal Register of Legislation.

Table item 2 provides that Schedule 1 to the Regulations, containing the text of the Agreement, commences on the later of the day after the Regulations are registered on the Federal Register of Legislation and the day the Agreement comes into force for Australia. However, the Schedule 1 provisions will not commence at all if the Agreement does not come into force for Australia.

Further, table item 2 requires the Minister for Social Services (the Minister) to announce the day the amendments in Schedule 1 come into force for Australia, by a notifiable instrument. The required notifiable 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 Serbia, as required under Article 24 of the Agreement.

The commencement provision in section 2 of the Regulations satisfies the requirements of subsection 8(2) of the Act, namely, that regulations are not to come into operation on a day earlier than the day the relevant agreement comes into operation for Australia.

The commencement provision in section 2 of the Regulations does not include a mechanism by which the Regulations will commence or be repealed if the

Minister has not made a notifiable instrument 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 24 of the Agreement.

Section 3 provides that the Regulations are made under subsection 8(1) of the Act.

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

Section 4 of the Regulations provides that the Regulations will be repealed on the day after Schedule 1 to the Regulations commences.

Part 3 of Chapter 3 of 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. This Part 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 of the Regulations has been included to ensure that the Regulations will be repealed once Schedule 1 to the Regulations commences.

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

Schedule 1 – Amendments

Item 1 of Schedule 1 amends the Act to insert the Agreement as Schedule 33.

The Agreement, signed at Belgrade on 20 January 2023, enables Australia and the Republic of Serbia to provide increased social security coverage for current and former residents of both countries.

The Agreement enables people in either country to combine periods of residence in Australia with periods of contribution in Serbia to meet the minimum 10-year residence requirement for the Australian Age Pension and/or the minimum contribution requirements for Serbian pensions.

Eligible individuals will also be able to lodge a claim for a pension in either Australia or Serbia. Without an agreement, claims for the Australian Age Pension can only be lodged in Australia.

The Agreement also modifies Australia's Superannuation Guarantee arrangements to exempt Australian employers whose workers are temporarily seconded to Serbia from having to pay compulsory Serbian insurance contributions in addition to the Australian superannuation contributions they already pay. Similarly, Serbian employers will not have to pay superannuation contributions in Australia for workers seconded to Australia if they are already paying insurance contributions in Serbia.

The Agreement complements similar social security agreements Australia has with 31 other countries, which are set out in individual Schedules to the Act.

Statement of Compatibility with Human Rights

Social Security (International Agreements) Amendment (Republic of Serbia) Regulations 2023

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

The Regulations are 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 Regulations add Schedule 33 containing the terms of the *Agreement on Social Security between Australia and the Republic of Serbia* (the Agreement), made on 20 January 2023, to the *Social Security (International Agreements) Act 1999*.

The Agreement enables Australia and the Republic of Serbia (Serbia) to share the responsibility and cost of providing increased social security coverage for current and former residents of both countries.

Under the Agreement, people in either country will be able to combine periods of residence in Australia with periods of contribution in Serbia to meet the minimum 10-year residence requirement for the Age Pension and/or the minimum contribution requirements for Serbian pensions. This will enable them to access these benefits earlier than they would otherwise be able to.

Eligible individuals will also be able to lodge a claim for a pension in either Australia or Serbia. Without the Agreement, former Australian residents in Serbia would need to return to Australia to live if they wish to claim the Age Pension, as is currently the case.

The Agreement will also exempt Australian employers whose workers are temporarily seconded to Serbia from having to pay compulsory Serbian insurance contributions in addition to the Australian superannuation contributions they already pay. Similarly, Serbian employers will not have to pay superannuation contributions in Australia for workers seconded to Australia if they are already paying insurance contributions in Serbia.

Human rights implications

The Regulations engage the following human rights:

- a. Rights to social security and an adequate standard of living
- b. Right to privacy
- c. Rights to equality and non-discrimination.

The rights to social security and an adequate standard of living

Article 9 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) recognises the right to social security and requires a social security scheme to be established under domestic law that provides a minimum essential level of benefits to all individuals and families that will enable them to cover essential living costs. Article 11 of the ICESCR recognises right to an adequate standard of living, which provides that everyone is entitled to adequate food, clothing and housing and to the continuous improvement of living conditions.

The Agreement promotes the rights to social security and an adequate standard of living by enhancing access to existing social security protections, enabling individuals to maximise their income and improve their standard of living.

The Agreement allows eligible people in both Australia and Serbia access to social security benefits that may not otherwise been available to them. The Regulations do this by overcoming barriers to benefit payments in the domestic legislation of Australia and Serbia.

Residence in one country will not affect a person's entitlement to relevant benefits under the domestic legislation of the other country. People who move between Australia and Serbia will be able to do so in the knowledge their entitlement to benefits is recognised in both countries.

People in either country will be able to combine periods of residence in Australia with periods of insurance in Serbia to meet the minimum 10-year residence requirement for the Age Pension and/or the minimum contribution requirements for Serbian pensions. This will enable them to access these benefits earlier than they would otherwise be able to.

Eligible individuals will also be able to lodge a claim for a pension in either Australia or Serbia. Without the proposed Agreement, former Australian residents in Serbia would need to return to Australia to live if they wish to claim the Age Pension, as is currently the case.

The right to privacy

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) recognises that no one shall be subjected to arbitrary or unlawful interference with their privacy. The disclosure of personal information without a person's consent will engage, and limit, the protection from arbitrary and unlawful interference with privacy.

The right in Article 17 may be subject to permissible limitations, where the limitations are authorised by law and are not arbitrary. In order for an interference with the right to privacy to be permissible, the interference must be authorised by law, be for a reason consistent with the ICCPR and be reasonable in the particular circumstances. The UN Human Rights Committee has interpreted the requirement of 'reasonableness' to imply that any interference with privacy must be proportional to the end sought and be necessary in the circumstances of any given case.

The Agreement engages the right to privacy as the Competent Authorities and Competent Institutions of Australia and Serbia will exchange information necessary to enable the administration of the Agreement, which may include information to determine eligibility or enable payment of any benefit under the Agreement.

The Agreement provides any exchange of information to be in accordance with the laws and administrative practices of both countries. Any information exchanged about an individual is confidential and only to be used for the purposes of the Agreement and associated domestic social security legislation.

To the extent that the Agreement may limit the right to privacy, the limitation is lawful and non-arbitrary. The exchange of information and data between the Competent Authorities and Competent Institutions of Australia and Serbia is limited to information necessary to administer the benefits under the Agreement. This exchange reduces the administrative burden for eligible persons and facilitates the provision of financial support to eligible individuals.

The rights to equality and non-discrimination

Article 2(2) of the ICESCR and article 26 of the ICCPR recognise rights to equality and protection against discrimination on any ground. Equality affirms that all human beings are born free and equal. Equality presupposes that all individuals have the same rights and deserve the same level of respect. All people have the right to be treated equally.

Non-discrimination is an integral part of the principle of equality. It ensures that no one is denied their rights because of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth. In addition to those grounds, discrimination on certain other grounds may also be prohibited. These grounds include age, nationality, marital status, disability, place of residence within a country and sexual orientation.

The Agreement engages the right to equality and non-discrimination by direct differential treatment of eligible persons who have moved between Australia and Serbia compared to pensioners who have moved between Australia and a country without a social security agreement with Australia.

The intent is that only eligible individuals who have moved between Australia and Serbia will be able to combine periods of residence in Australia with periods of contribution in Serbia to meet the minimum 10-year residence requirement for the Age Pension and/or the minimum contribution requirements for Serbian pensions. Eligible individuals will also be able to lodge a claim for a pension in either Australia or Serbia. Other pensioners will not be able to use periods of contribution in a non-agreement country to meet minimum residence or contribution requirements for payments in Australia or in a country without a social security agreement with Australia. Other pensioners will also not be able to lodge a claim for the Age Pension from a country without a social security agreement with Australia.

Social security agreements are bilateral treaties, negotiated between two parties to strengthen bilateral relations and coordinate social security benefits and coverage

between those parties. Each agreement reflects the particular terms that were negotiated and agreed between the two parties.

The Agreement will enable Australia and Serbia to share the responsibility and cost of providing increased social security coverage for eligible people who have moved between the two countries.

To the extent that the Agreement limits the right to equality and non-discrimination, this is reasonable and proportionate to achieving the legitimate purposes of the Agreement.

Conclusion

The Regulations are compatible with human rights because they promote the protection of human rights and, to the extent that they may limit human rights, those limitations are reasonable, necessary and proportionate.

Minister for Social Services, the Hon Amanda Rishworth MP