

**AGREEMENT ON SOCIAL SECURITY BETWEEN THE
GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF THE
REPUBLIC OF CHILE, DONE AT CANBERRA ON 25 MARCH 2003**

Documents tabled on 14 May 2003

National Interest Analysis

Text of the proposed treaty action

Regulation Impact Statement

Annexures:

Consultations

Chile - political brief

Chile - fact sheet

List of other treaties with Chile

List of treaties on social security with other countries

NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY

SUMMARY PAGE

Agreement on Social Security between the Government of Australia and the Government of the Republic of Chile, done at Canberra on 25 March 2003

Date of Tabling of Proposed Treaty Action

1. 14 May 2003

Nature and Timing of Proposed Treaty Action

2. The Agreement was signed on 25 March 2003.
3. In accordance with Article 29, the Agreement shall enter into force on the first day of the third month following an exchange of notes between Australia and Chile notifying that all legislative or other matters necessary to give effect to the Agreement have been finalised. It is proposed that this exchange of notes will take place in October 2003 with the Agreement entering into force on 1 January 2004.

Overview and National Interest Summary

4. The Agreement will bring economic and political benefits to Australia. It will assist in maximising the foreign income of Australian residents and there will be a flow-on effect of these funds into the Australian economy. The Agreement will also serve to reinforce Australia's political, business and strategic interests. The Agreement will further strengthen bilateral relations between Australia and Chile and provide choices in retirement for individuals who have migrated (or who will migrate) to Australia or Chile during their working lives.
5. The Agreement provides for enhanced access to certain Australian and Chilean social security benefits and greater portability of these benefits between the countries. Portability of benefits allows for the payment of a benefit from one country into another country. This is an underlying principle of Australia's bilateral agreements on social security where the responsibility for providing benefits is shared. Under the Agreement, residents of Australia and Chile will be able to move between Australia and Chile with the knowledge that their right to benefits is recognised in both countries.

Reasons for Australia to take the proposed treaty action

6. Australia's network of bilateral social security agreements improves access to income support for people whose adult lives are split between Australia and the country with which Australia has entered a social security agreement. Most of the people benefiting from these agreements are age pensioners. Such agreements also improve income support coverage for people with disabilities.
7. The Agreement with Chile incorporates the same general principles as a number of other agreements that Australia has on social security (see Annexure E). A key element of this Agreement, and the other social security agreements, is the sharing of responsibility between the parties in providing adequate social security coverage for former residents of their countries.
8. The Australian Government currently pays pensions under the *Social Security Act 1991* ("the Act") to around 4,400 Chilean-born pensioners, the vast majority of whom are resident in Australia. Under domestic portability provisions in the Act, Australia pays pensions to approximately 200 people (not necessarily Chilean-born people) residing in Chile.
9. Chilean legislation requires a person to have maintained or completed certain periods of insurance to qualify for a retirement pension. The Agreement will help overcome these restrictions.
10. The Department of Family and Community Services estimates that, through the Agreement, approximately 600 people residing in Australia and Chile will benefit by being able to claim payments to which they currently do not have access.
11. For Australia, the Agreement will cover access to age pensions and disability support pensions (DSP) for the severely disabled. For Chile, the Agreement will cover old-age pensions, invalidity pensions and survivor pensions.
12. The Agreement provides that both countries will share the financial responsibility for providing these benefits. This means that individuals may be eligible for benefits from both countries if they meet certain eligibility criteria and they have lived and/or worked in both countries during their working lives. Residents of Australia and Chile will be able to move between Australia and Chile knowing that their right to benefits recognised in both countries and that each country will contribute fairly to support those who have spent part of their working lives in both countries.
13. Double coverage provisions have also been included to ensure that Australian and Chilean employers do not have to make two superannuation contributions for an employee seconded to work in the other country. Under current arrangements the employer would be required to make contributions under both Australian and Chilean legislation. The new provisions will ensure the employer, and the employee where compulsory employee contributions are required, have to contribute only to the relevant superannuation scheme in their home country.

Obligations

14. The Agreement places reciprocal obligations on both Australia and Chile.

15. Article 2 sets out for both countries the scope of social security benefits covered by the Agreement as described in paragraph 12 of this National Interest Analysis.

16. Article 3 describes the group of people to whom the Agreement applies. It provides that the Agreement shall apply to any person who is or has been an Australian resident or a resident of Chile, or is or has been subject to the legislation of Chile, and, where applicable, to any partner, dependant or survivor of such a person.

17. Article 4 of the Agreement requires that all persons to whom the Agreement applies must be treated equally in relation to the application of legislation regarding social security benefits.

18. Article 8 of the Agreement deals with the situation of employees who are sent from one country to the other to work. This Article is generally aimed at avoiding double coverage of employees or liability of employers in, for example, the case of superannuation. It specifies that in certain circumstances, only one country's legislation relating to coverage will apply. The general rule is that only the legislation of the country in which the employee is working will apply. The main exception to this rule is where the employee has been seconded to work temporarily in that country (a four-year limit applies to non-Government employees). In such situations, only the legislation of the employee's home country will apply. If the employee is working on a ship or aircraft in international traffic then only the legislation of the country where the employee is resident will apply.

19. Article 12 of the Agreement deals with export of benefits and provides for the payment of benefits by Australia and Chile into the other country. Article 12 also provides that neither Australia, nor Chile, is entitled to charge administrative fees or charges for processing benefits payable under the Agreement. Article 12 also requires Australia and Chile to immediately transfer sums owed under the Agreement in case of currency controls being introduced by either country.

20. Article 13 obliges Australia to provide Chile with relevant medical information it holds when Chile requires that information to assess eligibility to Chilean invalidity benefits. Chile is similarly obliged to provide Australia with relevant medical information when it is needed to assess entitlement to Australian disability support pension.

21. Article 14 of the Agreement provides for persons who are qualified to claim an Australian benefit – but for the fact they are not Australian residents. Article 14 allows such persons residing in Chile, or a third State with which Australia has concluded an appropriate Agreement, to lodge a claim for a benefit listed in the Agreement if they are in Chile or that third State.

22. Article 15 establishes the circumstances in which Chilean periods of insurance can be used to satisfy the minimum residence requirements for an Australian benefit stipulated in social security law. Under this Article, claimants are able to add these “deemed” Chilean periods of insurance to actual periods of residence in Australia in order to qualify for an Australian benefit. This means that people who do not meet the minimum period of Australian residence to qualify for payment can add periods of insurance in Chile to their actual periods of Australian residence in order to qualify for payment. However, the rate of

Australian pension will still be based on their actual periods of working life residence in Australia.

23. The method of calculating the rate of Australian benefits to a person under the Agreement is set out in Article 16. Where an Australian pension is payable to a person outside Australia that pension is determined according to Australian social security law. Where an Australian benefit is payable to a person who is in Australia the rate of that benefit is determined according to Australian social security law, but when calculating that person's income any Chilean benefit received by that person or their partner is disregarded. The amount of any Chilean benefit is deducted from the rate of Australian benefit payable.

24. Article 17 obliges Australia to disregard from all its social security income tests Chilean Pension of Mercy payments. The payments to be disregarded are those made under Chilean Law number 19.123 (mercy payments) and those made under Chilean Law 19.234 (periodical mercy payments). These are Chilean payments established by law to compensate and repair the moral suffering of the victims, and relatives of victims, of human rights abuse or political violence that occurred in Chile between 11 September 1973 and 10 March 1990.

25. Article 22 provides that any claim, notice or written appeal lodged with one Party within a prescribed period is to be accepted as having been lodged with the other Party within the prescribed period. Article 22 also sets out certain requirements with respect to the authentication of documents and the waiver of fees to processing documents.

26. Article 23 provides a mechanism by which Australia may recover an overpayment of a benefit resulting from the subsequent grant (with arrears) of an equivalent benefit by Chile. This Article is particularly necessary for Australia's income tested social security system and is a standard provision in Australia's bilateral agreements on social security.

27. Article 24 sets out the means, subject to relevant domestic laws, regulations and policies, through which the relevant authorities are to cooperate in order to implement the Agreement and ensure its effective operation. It also provides for the exchange of information so that the Agreement can be applied. The domestic laws on privacy in each country continue to apply to personal data.

28. Under Article 25 of the Agreement, Australia and Chile must make the necessary administrative arrangements for the implementation of the Agreement and designate liaison agencies.

29. Article 26 provides that any period, event or fact relevant to a person's eligibility for benefit under the agreement is to be considered but that the Agreement shall not establish any entitlement to benefits for any period prior to its entry into force.

30. Article 27 obliges Australian and Chilean authorities to resolve by consultation any difficulties with regard to the interpretation or application of the Agreement.

Implementation

31. A new Schedule containing the full text of the Agreement will be added to the *Social Security (International Agreements) Act 1999*. This Act gives effect to Australia's international social security agreements. These agreements are attached as schedules to the

Act. The regulation making powers contained in Sections 8 and 25 of that Act will be used to implement the Agreement. Article 25 of the Agreement specifies that it will be implemented in accordance with a separate Administrative Arrangement.

32. An amendment has been made to the *Superannuation Guarantee (Administration) Regulations* dealing with bilateral social security agreements to eliminate double superannuation coverage. The Regulations were gazetted on 17 August 2001. The Regulations provide that payment of salary or wages to an employee who has been sent temporarily to work in Australia will not give rise to a superannuation guarantee obligation for the overseas employer (provided an appropriate international agreement is in place)

33. No action is required by the States or Territories, and no change to the existing roles of the Commonwealth, the States and Territories in social security matters will arise as a consequence of implementing this Agreement.

Costs

34. The Agreement is expected to result in an increase in administered outlays of A\$1.7m over the forward estimates period to 30 June 2007. Departmental costs of A\$1.3m over the same period represent the cost of implementing the Agreement including the costs of developing new computer systems, administrative processes, forms and staff training.

Consultation

35. Annexure A fully documents the consultation process.

Regulation Impact Statement

36. A Regulation Impact Statement is attached.

Future Treaty Action

37. There is no formal amendment procedure specified in the Agreement. However, Article 28 requires Australia and Chile to meet to review the Agreement when so requested by the other country.

38. In the absence of a formal amendment procedure in the Agreement, Article 39 of the Vienna Convention on the Law of Treaties applies. This provides that a treaty may be amended by agreement between the parties.

39. Any proposed amendment will need to go through the normal Australian procedure on treaty action, including scrutiny by the Joint Standing Committee on Treaties.

Withdrawal or denunciation

40. Article 29 (2) provides that the Agreement shall remain in force until the expiration of 12 months from the date either country notifies the other country in writing of their intention to terminate the Agreement. If Australia should terminate the Agreement, this would be subject to the domestic treaty process.

41. In the event of termination, Article 29 (3) preserves the rights of those people who are receiving benefits or who have lodged claims and would have been entitled to receive benefits under the Agreement.

Contact details

International Branch
Department of Family and Community Services

Annexure A

Agreement on Social Security between the Government of Australia and the Government of the Republic of Chile, done at Canberra on 25 March 2003

Consultations

State and Territory Governments were advised of the proposed Agreement through the Commonwealth-States-Territories Standing Committee on Treaties, and through separate explanatory information sent out by mail on 4 March 2003. The only reply received was from the Queensland State Government which had no issues to raise about the treaty.

Letters were sent to 72 Chilean community groups in Australia in April 2003 seeking their views on the new Agreement. An explanation of the Agreement was attached. A list of Chilean community groups whose views were sought is below.

The Asociación Chilena de la Decimacuarta Región en Australia (Chilean Committee for the Politically Exonerated and Relatives of Disappeared Persons), based in Victoria, replied noting that the provision exempting pensions of mercy for social security rate calculation purposes “reflected their expectation on this issue”. They also wished to “thank the Governments of Chile and Australia for reaching an Agreement in a very delicate and sensitive matter.”

Comments were also received from *Foro de Estudio Convenio de Seguridad Social entre Australia y Chile* - a forum organised by some leaders in the Chilean community in NSW and the ACT to study the Agreement. They indicated that “in general the Agreement establishes regulations that partly improve provisional aspects of Chilean residents on receipt of benefits”. The Forum also observed that in relation to the provision exempting pensions of mercy for social security rate calculation purposes the exemption is not retrospective and that there is not an amnesty for those who may not have declared that they receive Chilean pensions (including pensions of mercy), as required by the Australian Social Security Law.

Neither of these issues were raised by Chilean officials during negotiations. The exempting of pensions of mercy, as with the other beneficial provisions negotiated by the Parties to the Agreement, will not commence until the Agreement enters into force (this position could not change without further negotiations between the Parties).

It is not appropriate to have an amnesty in the terms of an agreement and one has not been given under any other agreement. Including an amnesty in any one agreement would inevitably lead to comparisons between communities and allegation of discrimination. It should be noted that there was a widely publicised **general social security amnesty** from 20 September 2000 to 19 January 2001.

Letters were also sent to major welfare organisations in Australia in April 2003 seeking their views on the new Agreement. A list of these organisations is below. The Ethnic Communities Council of Queensland Ltd replied advising that the Council “supports this arrangement, which we believe to be equitable to both our countries and the Republic of Chile”.

The views of the Southern Cross Group (representing expatriate Australians) were also sought via email in April 2003. No reply has been received to date.

Chilean Community Organisations consulted:

Organización para el Desarrollo Chileno en Australia	Red Chilena Australiana Indígena y Popular
Canberra-Chile Australian Association	The New Chilean Club Association Inc, NSW
Grupo Folklorico Violeta Parra	Casa Chile
Illawarra Chilean Association Inc.	Conjunto Folklorico Chileno Amancay
Colo Colo Club Ltd, Fairfield NSW	Radio 2XX Chile Australia Friendship Society
Los Andes	Grupo Corazón
Association of Chilean Communities of Victoria	Chile Lindo Incorporated, Windsor VIC
Asociación Cultural Chilena de Canberra	Springvale Condor Sporting Club
Club Chile Nuevo, WA	Comité Coordinador Chileno de Victoria
Andrés Alarcón y Los Chilenos	Chilean Welfare Association
Club Colo-Colo, Hamilton Hill WA	Club Chileno de Adelaida
Arauco libre	South Star Sporting Social and Cultural Club Inc
Club Chile- Andes	Fundación Chilena Nuestra Casa de la Cultura Inc
Conjunto Folclórico Pesochi	Hispanic Community Fiesta Victorian Committee
Unión y Juventud	Radio 2GLF FM “Contacto Latino”
Cobreola Sporting, Social & Ethnical Club	Locutor Radio 2NBC “Música Viva”
Radio Rio FM	Radio 101 FM Brisbane
Extra Informativo Radio Austral	Radio 2VOX FM Wollongong
Radio 2VOX FM Wollongong	Tierra Lejana
The Hispanoamerican Newspaper	Portillo Ski-Lodge

Grupo Folclorico Arauco	Amaru
El Sonido de los Andes	Embajador Honorario de la ciudad de Rockdale
ACT Latin American Seniors Centre Inc	CELAS
Lemuy	Asociación de Amigos de Chile, VIC
Trasandinos Sporting Club	The Chilean Dance Company, NSW
Chilean Australian Club Inc ACT	Club Flamencos, NSW
Conjunto Quinchamali	Club Chileno de Victoria Inc
Los Chilenos, NSW	New Chile Social Inc Club, WA
"Chile Lindo", West Footscray VIC	Radio 2EA SBS, NSW
Asociación Chilena de la Decimacuarta Región en Australia, NT	Representant, Achipre, ACT
Amigos del Hogar de Cristo, NSW	Consejo Estatal Organizaciones Chilenas CEO Chile
Centro Cultural Pablo Neruda, VIC	Consejo Chileno Unidad y Progreso
Casa Chile, SA	Asociación Chilena de la Decimacuarta Región en Australia
Comité Concertacionista de Melbourne	Association of Chilean Communities of Victoria
Club Macarthur United	Partido Socialista Central Coast
Representant Socialist Party	Teleton, NSW

Major Welfare Organisations and Community Groups Consulted:

Welfare Organisations

Australian Council of Social Services	COTA National Seniors Policy Secretariat
Federation of Ethnic Communities' Councils	ACT Multicultural Community Council
Ethnic Communities' Council of NSW	Multicultural Council of NT
Ethnic Communities' Council of QLD	Multicultural Council of Tasmania
Ethnic Communities' Council of Victoria	Ethnic Communities' Council of Western Australia
ACROD (National Office)	Welfare Rights Centre
Association of Independent Retirees	National Seniors Association
Combined Pensioners and Superannuants Association	Physical Disabilities Council of Australia Ltd
Council of Intellectual Disabilities Agencies	National Ethnic Disability Alliance

Community Groups

Southern Cross Group
Brussels, BELGIUM
www.southern-cross-group.org

State and Territory Government Contacts:

Director
Government Branch
Department of Premier and Cabinet
Melbourne VIC 3001

Branch Manager
Intergovernmental and Regulatory Reform
Branch
Cabinet Office
Sydney NSW

Director
Policy Systems Division
Department of Premier and Cabinet
Brisbane QLD

Director
Policy Division
Department of Premier and Cabinet
Hobart TAS 7001

Assistant Director General
Federal Affairs
Perth WA 6000

Director
Intergovernmental Relations
Department of Premier and Cabinet
Adelaide SA 5001

Director
Policy and Co-ordination Division
Department of Chief Minister
Darwin NT 0801

Cabinet Office
Chief Minister's Department
Canberra ACT 2601

Chile: Political Brief

Political System

Chile's 1980 constitution provides for a presidential system of government. The President is head of state and appoints the cabinet. The President serves a six-year term and may not run for a second consecutive term.

The national legislature, the Congress, is bicameral. The Senate (upper house) is made up of 38 elected and nine appointed members who serve eight year terms. The Chamber of Deputies (lower house) has 120 members elected for four-year terms.

Current Political Situation

Ricardo Lagos, leader of the centre-left Concertacion coalition of parties, won a narrow victory in the 1999/2000 elections and was inaugurated as Chile's president in March 2000. Lagos set as the key priority of his administration the restoration of high levels of economic growth and a reduction in unemployment following the economic recession which struck Chile in the second half of 1998 and for most of 1999.

The continuing regional economic crisis, and the fact that his coalition lost power in the Parliamentary elections of 2001 and has been affected by internal conflicts and a series of corruption scandals, affecting key members of the President's own political faction, has damaged the President's ability to implement his legislative agenda and has forced him to concentrate on implementing measures to contain corruption and on putting his political house in order.

Legal System

The legal system comprises a Supreme Court whose members are appointed for life by the President, 16 regional courts of appeal whose members are appointed by the Supreme Court, as well as lower courts.

Economic Overview

There is broad consensus across the political spectrum in favour of economic liberalisation. Liberalisation has led to increased competitiveness and substantial growth in Chile's traditional export sectors, namely mining and fishing, but also in new industries such as fruit and vegetables, aquaculture, forestry, wine and services.

In addition to its liberalised economy, generally modern services sector and improving infrastructure, Chile is also assessed as the least corrupt country in Latin America according to Transparency International. Mining (especially copper) remains the dominant sector of the economy accounting for 8.2 per cent of GDP and almost 40% of Chile's exports in 2002. GDP growth for 2002 was 2.1%, with estimate expectations for 2003 between 3-4%.

Bilateral Relationship

Australian investment in Chile stood at A\$280 million in 2002, according to the Australian Bureau of Statistics. There are currently more than 50 Australian or Australian-affiliated companies based in Santiago and more than 100 represented.

The Australia-Chile Bilateral Trade and Investment Commission was established in May 1998. Its aim is to generate greater awareness of mutual opportunities by the respective

business communities and to implement practical measures to improve the environment for business.

The 2001 Census recorded Australia's Chilean-born community at just over 23,000 people, Australia's largest Latin American community.



CHILE

Fact Sheet

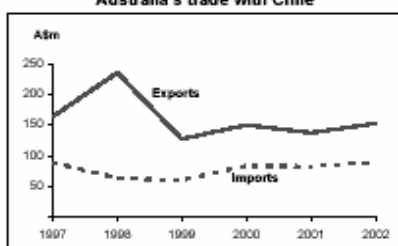
General information:

Capital:	Santiago	Head of State and Head of Government:	
Surface area:	757 thousand sq km	H.E. President Mr Ricardo Lagos Escobar	
Official language:	Spanish		
Population:	15.1 million (2002)		
Exchange rate:	A\$1 = 395.3382 Pesos (Dec 2002)		

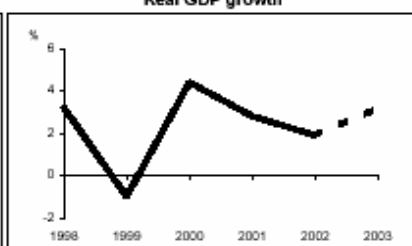
Recent economic indicators:

	1998	1999	2000	2001	2002(a)	2003(b)
GDP (US\$bn):	79.4	73.0	75.5	66.5	63.3	66.1
GDP per capita (US\$):	5,527	5,024	5,134	4,466	4,206	4,349
Real GDP growth (% change YOY):	3.2	-1.0	4.4	2.8	1.9	3.2
Current account balance (US\$m):	-4,014	-302	-1,073	-1,241	-618	-160
Current account balance (% GDP):	-5.1	-0.4	-1.4	-1.9	-1.0	-0.2
Goods & services exports (% GDP):	26.3	29.3	31.7	34.7	35.6	37.6
Inflation (% change YOY):	5.1	3.3	3.8	3.6	2.5	2.7
Unemployment rate (%):	6.1	9.7	9.2	9.2	9.2	9.4

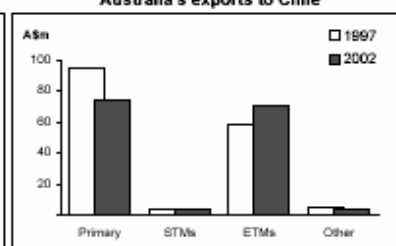
Australia's trade with Chile



Real GDP growth



Australia's exports to Chile



Australia's trade relationship with Chile:

Major Australian exports, 2002 (A\$m):

Coal	71
Internal combustion piston engines	18
Specialised machinery	8
Civil engineering equipment	6
Pumps for liquids	4

Major Australian imports, 2002 (A\$m):

Pulp & waste paper	23
Fish, fresh, chilled or frozen	18
Explosives & pyrotechnic products	8
Animal feed	7
Preserved fruit and preparations	4

Australian merchandise trade with Chile, 2002:

		Total share:	Rank:	Growth (yoy):
Exports to Chile (A\$m):	153	0.1%	49th	11.0%
Imports from Chile (A\$m):	90	0.1%	49th	8.5%
Total trade (exports + imports) (A\$m):	243	0.1%	53rd	10.1%
Merchandise trade surplus with Chile (A\$m):	62			

Australia's trade in services with Chile, 2002 (c):

		Total share:
Exports of services to Chile (A\$m):	24	0.1%
Imports of services from Chile (A\$m):	68	0.2%
Services trade deficit with Chile (A\$m):	44	

Chile's global trade relationships:

Chile's principal export destinations, 2001:

1	United States	18.3%
2	Japan	12.4%
3	United Kingdom	6.0%
4	Brazil	5.5%
5	China	4.9%
40	Australia	0.2%

Chile's principal import sources, 2001:

1	Argentina	18.7%
2	United States	17.6%
3	Brazil	8.8%
4	China	6.1%
5	France	5.2%
26	Australia	0.5%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.

(a): all recent data subject to revision; (b): EIU forecast; (c): Preliminary.

n.a. Data not available.

Fact sheets are updated biannually; next update: September 2003

Annexure D

List of other treaties with Chile

- Agreement with Chile on Gainful Employment of Dependents of Diplomatic and Consular Personnel.
- Agreement with the Republic of Chile on the Reciprocal Promotion and Protection of Investments.
- Treaty on Extradition with the Republic of Chile.
- Agreement with Chile relating to Air Services.

Annexure E

List of treaties on social security with other countries:

- Austria
- Canada
- Cyprus
- Denmark
- Germany
- Ireland
- Italy
- Malta
- Netherlands
- New Zealand
- Portugal
- Spain
- United States of America

- Belgium (a)
- Slovenia (a)

(a) Not yet in force.