

EXPLANATORY STATEMENT 3 of 2008

Amendment to the Agreement on Social Security between the Government of Australia and the Government of the Republic of Chile of 25 March 2003 ([2004] ATS 18)

Practical and legal effect

1. The proposed treaty action is to amend the *Agreement on Social Security between the Government of Australia and the Government of the Republic of Chile* (the Australia-Chile Agreement) to exempt new Chilean Annual Repatriation Payments from Australia's social security income test. The practical and legal effect of the proposed treaty matter is minor, because it would benefit a small number of people currently residing in Australia (less than 100). Accordingly the financial implications are negligible. No other aspect of the Agreement would be impacted by the proposed amendment.

Nature and timing of the proposed treaty matter

2. The Australia-Chile Agreement obliges Australia to disregard Chilean "Pension of Mercy" payments from its social security income test. 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.

3. The effect of the proposed treaty action is to also exempt Chilean Annual Repatriation Payments under Chilean law number 19.992 (referred to as annual mercy payments) from Australia's social security income test. The Annual Repatriation Payments target a sub-group of Chilean people receiving existing Pensions of Mercy. An additional sub-paragraph (d) is proposed that would exempt future payments of a similar character, provided this is jointly agreed in writing by the Australian and Chilean competent authorities.

4. Once Australia's domestic treaty processes are completed, diplomatic notes will be exchanged between Australia and Chile to bring the proposed amendment into force. Draft third person notes are attached.

Reasons for Australia to take the proposed action relating to the treaty matter

5. The proposed treaty action will result in the Annual Repatriation Payments receiving the same beneficial means testing treatment as Pensions of Mercy. This will ensure that affected Chilean victims of physical torture and persecution receive consistent treatment under Australia's income test as others who suffered human rights abuses and political violence under the former repressive political regime.

Implementing legislation

6. Amendments to Schedule 15 of the *Social Security (International Agreements) Act 1999* are required to implement the proposed treaty action.

International Agreements
Department of Families, Housing,
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Submitted to JSCOT: 26 August 2008
Date tabled: 26 August 2008