

EXPLANATORY STATEMENT

Long Service Leave (Commonwealth Employees) Act 1976

Long Service Leave (Commonwealth Employees) Amendment (2017 Measures No. 1) Regulations 2017

Issued under the Authority of the Minister Assisting the Prime Minister for the Public Service

Authority

Section 26 of *Long Service Leave (Commonwealth Employees) Act 1976* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

Background

The Act makes provision for long service leave in respect of Commonwealth employees and certain other persons. The Act provides for persons employed in Government Service to be granted long service leave or a payment in lieu where the period of service of the person is at least 10 years.

Regulation 8 of *Long Service Leave (Commonwealth Employees) Regulation 2016* (the Regulations) is made under subsection 7(2) of the Act. It provides that the previous employment of an employee in the service of a person, authority, institution or body that is referred to in Schedule 2 shall be taken into account for the purposes of Section 11 of the Act as if it had been employment in Government Service.

Purpose and Operation

The Australian Synchrotron Company Limited (ASCo) was set up as a Victorian-funded and operated facility to run the Australian Synchrotron, operating under state law, commencing operation in 2006. In 2012, the Victorian Government transferred responsibility for operations to the Australian Nuclear Science and Technology Organisation (ANSTO), a Commonwealth agency. As a result, ANSTO established Synchrotron Light Source Australia Pty Ltd (SLSA) as a subsidiary, registered in Victoria, to take over operation of the Synchrotron. On 1 July 2016 ownership of the Synchrotron was transferred to ANSTO. Following this, the transfer of SLSA employees to ANSTO occurred on 1 September 2016.

The National E-Health Transition Authority (NEHTA) is the predecessor body for a newly established Commonwealth agency, the Australian Digital Health Agency (ADHA). NEHTA was jointly funded by the Commonwealth and each State and Territory. It was operational from 2005 until 30 June 2016. On 1 July 2016, NEHTA's functions and resources transitioned to ADHA along with some Department of Health staff.

These regulations amend Schedule 2 to include ASCo, SLSA and ADHA to allow future Commonwealth employers to recognise the employees' prior service within the meaning of section 11 of the Act. The prior service of SLSA employees is only be recognised if they

were transferred to ANSTO on 1 September 2016. Likewise, prior service of NEHTA employees is only be recognised if they have transferred to ADHA on 1 July 2016.

Advice from the Office of Best Practice Regulation indicated that a Regulation Impact Statement was not required (OBPR Reference Number 13837).

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

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

The Regulations commence on the day after registration.

Consultation

ANSTO and ADHA were consulted extensively regarding the history of SLSA and NEHTA. Both agencies obtained independent legal advice regarding mechanisms to allow the recognition of prior service. Each agency has made arrangements to ensure that there will be no dual entitlement under the Act and the corresponding state long service leave legislation.

Statement of Compatibility with Human Rights

The Statement of Compatibility with Human Rights is set out in Attachment A. It has been prepared in accordance with section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

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*Long Service Leave (Commonwealth Employees) Amendment (2017 Measures No. 1)
Regulations 2017*

This Disallowable Legislative Instrument is 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 Disallowable Legislative Instrument

The Australian Synchrotron Company Limited (ASCo) was set up as a Victorian-funded and operated facility to run the Australian Synchrotron. It was administered under state law and commenced operation in 2006. In 2012, the Victorian Government transferred responsibility for operations to the Australian Nuclear Science and Technology Organisation (ANSTO), a Commonwealth agency. As a result, ANSTO established Synchrotron Light Source Australia Pty Ltd (SLSA) as a subsidiary, registered in Victoria, to take over operation of the Synchrotron. On 1 July 2016 ownership of the Synchrotron was transferred to ANSTO. Following this, the transfer of SLSA employees to ANSTO occurred on 1 September 2016.

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The purpose of the *Long Service Leave (Commonwealth Employees) Amendment (2017 Measures No. 1) Regulations 2017* is to amend Schedule 2 of the Regulation to include ASCo, SLSA and ADHA. This ensures prior service with these employers is recognised for the purpose of calculating an employee's long service leave entitlements under section 11 of the *Long Service Leave (Commonwealth Employees) Act 1976*.

Human Rights Implications

This Disallowable Legislative Instrument engages with Article 7 of the *International Covenant on Economic, Social and Cultural Rights*, particularly part (d). Article 7 is as follows:

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) A decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Conclusion

This Disallowable Legislative Instrument is compatible with human rights because it promotes the protection of human rights. The inclusion of SLSA and ADHA at Schedule 2 enhances the long service leave entitlements of a number of employees. The amendment allows this cohort's long service leave entitlements to parallel the provisions prescribed to other Commonwealth employees. This supports the realisation of Article 7(d) by enabling this cohort to have access to the same rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as other Commonwealth employees.