**EXPLANATORY STATEMENT**

**Maternity Leave (Commonwealth Employees) Amendment Regulations 2018**

Issued by the authority of the Minister Assisting the Prime Minister for the Public Service

*Maternity Leave (Commonwealth Employees) Act 1973*

*Maternity Leave (Commonwealth Employees) Amendment Regulations 2018*

The *Maternity Leave (Commonwealth Employees) Act 1973* (the Act)makes provision for maternity leave for employees of the Commonwealth and certain other persons. Subsection 5(1) of the Act provides that the Act applies to such persons employed by the Commonwealth as are prescribed.

Section 15 of the Act provides that the Governor‑General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to this Act. The *Maternity Leave (Commonwealth Employees) Regulations* *2017* (the Regulations) prescribe persons to whom the Act applies including persons referred to in Schedule 1 to the Regulations.

**Purpose of the *Maternity Leave (Commonwealth Employees) Amendment Regulations 2018***

On 1 July 2018, the *Intelligence Service Amendment (Establishment of the Australian Signals Directorate) Act 2018* commences. This will separate the Australian Signals Directorate from the Department of Defence and establish it as an independent statutory authority within the Defence Portfolio.

At that time, employees of the Australian Signals Directorate will no longer be employed under the *Public Service Act 1999*, but the Director-General will adopt the principles of that Act to the extent they are consistent with the effective performance of the Australian Signals Directorate.

The purpose of the *Maternity Leave (Commonwealth Employees) Amendment Regulations 2018* (the amending Regulation) is to continue to allow employees of the Australian Signals Directorate to be covered under the Act.

**Commencement**

The amending Regulation will commence on 1 July 2018.

**Consultation**

The Department of Defence and the Australian Signals Directorate were consulted on the proposed amending Regulation and agree that the amendment continues existing arrangements.

The Office of Best Practice Regulation has indicated that no regulatory impact statement was required.

The Regulation was drafted by the Office of Parliamentary Counsel.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

***Maternity Leave (Commonwealth Employees) Amendment Regulations 2018***

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 Regulations**

The purpose of the Regulations is to ensure that coverage of the *Maternity Leave (Commonwealth Employees) Act 1973* continues to apply to employees of the Australian Signals Directorate from 1 July 2018.

**Human rights implications**

This amending Regulation does engage the human right to maternity leave contained in article 10(2) of the International Covenant on Economic, Social and Cultural Rights and article 11(2)(b) of the Convention on the Elimination of All Forms of Discrimination Against Women.

This Legislative Instrument advances human rights by continuing to extend the provisions of the *Maternity Leave (Commonwealth Employees) Act 1973* to the employees in the Australian Signals Directorate once it becomes an independent statutory authority within the Defence Portfolio as otherwise they would no longer be covered by the provisions of that Act.

**Conclusion**

This amending Regulation is compatible with human rights because it ensures that employees of the Australian Signals Directorate are covered by the right to maternity leave.

**Attachment A – Provisions in the** ***Maternity Leave (Commonwealth Employees) Amendment Regulations 2018***

***Section 1 – Name***

This section provides for the name of the instrument: ***Maternity Leave (Commonwealth Employees) Amendment Regulations 2018***.

***Section 2 – Commencement***

This section provides that the instrument commences on 1 July 2018.

***Section 3 – Authority***

This section provides that the instrument is made under the ***Maternity Leave (Commonwealth Employees) Act 1973***.

***Section 4 – Schedules***

This section provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

***Schedule 1 – Amendments***

This Schedule inserts an item at the end of the table in Schedule 1 to the ***Maternity Leave (Commonwealth Employees) Regulations 2017*** to include a person employed under section 38A of the *Intelligence Services Act 2001*.