

## **EXPLANATORY STATEMENT**

**Issued by authority of the Assistant Minister to the Prime Minister and Cabinet,  
Parliamentary Secretary to the Prime Minister**

*Maternity Leave (Commonwealth Employees) Act 1973*

*Maternity Leave (Commonwealth Employees) Amendment (ASIC) Regulations 2019*

The *Maternity Leave (Commonwealth Employees) Act 1973* (the Act) makes provision for maternity leave for employees of the Commonwealth and other prescribed persons.

Section 15 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 to be prescribed for carrying out or giving effect to the Act.

The *Treasury Laws Amendment (Enhancing ASIC's Capabilities) Act 2018* commences on 1 July 2019 to allow the Australian Securities and Investments Commission (ASIC) to employ staff directly, rather than under the *Public Service Act 1999* (the PSA). The *Maternity Leave (Commonwealth Employees) Amendment (ASIC) Regulations 2019* (the Regulations) makes amendments to the *Maternity Leave (Commonwealth Employees) Regulations 2017* to ensure ASIC employees continue to be covered, at a minimum, by the maternity leave arrangements provided for under the Act once ASIC ceases to employ staff under the PSA.

ASIC's maternity leave arrangements currently exceed the minimum levels mandated by the Act. The amendment will safeguard the minimum levels for ASIC and does not interfere with ASIC's current maternity leave arrangements.

Public consultation was not conducted on draft Regulations as the amendments are of a minor nature and ensure existing minimum maternity leave arrangements are maintained for ASIC employees.

Details of the Regulations are included in the [Attachment](#).

The amendments to prescribe ASIC in the *Maternity Leave (Commonwealth Employees) Regulations 2017* commence on 1 July 2019.

Details of the *Maternity Leave (Commonwealth Employees) Amendment (ASIC) Regulations 2019*

Section 1 — Name of Regulations

This section specifies that the name of the Regulations is the *Maternity Leave (Commonwealth Employees) Amendment (ASIC) Regulations 2019*.

Section 2 — Commencement

This section provides that the changes that prescribe ASIC in the *Maternity Leave (Commonwealth Employees) Regulations 2017* commence on 1 July 2019.

Section 3 — Authority

This section states that the Regulations are 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 Regulations are amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

**Amendments**

Schedule 1

Item 1 of Schedule 1 amends section 6 of the *Maternity Leave (Commonwealth Employees) Regulations 2017* to declare ASIC as a body corporate for the purposes of the definition of ***prescribed authority*** in section 3 of the Act.

Once the *Treasury Laws Amendment (Enhancing ASIC's Capabilities) Act 2018* commences on 1 July 2019 and ASIC ceases to employ staff under the PSA, its staff will also cease being covered by the maternity leave arrangements under the Act. By declaring ASIC as a body corporate for the purposes of the definition of ***prescribed authority***, the amendment ensures ASIC employees will continue to be covered, at a minimum, by the maternity leave arrangements under the Act once they are no longer employed under the PSA. ASIC's current maternity leave arrangements exceed those mandated by the Act. The amendment does not interfere with these arrangements.

## **Statement of Compatibility with Human Rights**

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

This 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 Legislative Instrument**

The Legislative Instrument ensures that ASIC employees continue to be covered, at a minimum, by the maternity leave arrangements under the *Maternity Leave (Commonwealth Employees) Act 1973* once ASIC ceases to employ staff under the PSA on 1 July 2019.

### **Human rights implications**

This Legislative Instrument engages 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 Act to ASIC employees once ASIC ceases to employ staff under the PSA on 1 July 2019.

### **Conclusion**

This Legislative Instrument is compatible with human rights as it ensures ASIC employees are covered, at a minimum, by the maternity leave arrangements under the Act once they cease to be employed under the PSA on 1 July 2019.