**EXPLANATORY STATEMENT**

***Long Service Leave (Commonwealth Employees) Amendment (Telstra New Entities) Regulations 2021***

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

*Long Service Leave (Commonwealth Employees) Act 1976*

**Legislative Authority**

The *Long Service Leave (Commonwealth Employees) Act 1976*(the Act) makes provision for long service leave entitlements for Commonwealth employees and certain other persons.

Section 26 of the *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 required, or permitted by the Act to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 5 of the Act provides that the Act applies to persons who are, or have been, employed in ‘Government Service’. A person is employed in a ‘Government Service’ if the person is ‘employed by the Commonwealth’ as described in section 10 of the Act.

Subparagraph 4(6)(c)(iii) of the Act provides that a reference in the Act to ‘a person who is employed by… the Commonwealth’ includes persons employed by a body corporate declared by the regulations to be a body corporate to which paragraph 4(6)(c) applies.

**Purpose and operation of the instrument**

Telstra Corporation Limited (Telstra) is declared in paragraph 7(c) of the *Long Service Leave (Commonwealth Employees) Regulation 2016* (the Principal Regulation) to be a body corporate to which paragraph 4(6)(c) of the Act applies (declared entity). Accordingly, persons employed by Telstra derive their long service leave entitlements from the Act.

Telstra is proposing a restructure of its business which will involve the establishment of new corporate entities. As part of the restructure, some employees will transfer from Telstra to a new corporate entity (transferred employees). As Telstra is a declared entity under the Principal Regulation, but the new corporate entities are not, the Act would not apply to those entities and to their employees post-transfer. Without amendment to the Principal Regulation, these employees’ entitlements under the Act would cease and they would become subject to long service leave legislation in their State or Territory.

The *Long Service Leave (Commonwealth Employees) Amendment (Telstra New Entities) Regulations 2021* (the Regulations) amend the Principal Regulation to declare the new Telstra corporate entities to be bodies corporate to which paragraph 4(6)(c) of the Act applies. This ensures that all employees of a new Telstra corporate entity will be employed in ‘Government Service’ for the purpose of the Act and the long service leave entitlements of transferred employees will continue to accrue in accordance with the Act.

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

The Regulations commence the day after registration on the Federal Register of Legislation.

Further details of the Regulations are set out in Attachment A. The Statement of Compatibility with Human Rights is set out in Attachment B.

**Consultation**

The Australian Government consulted Telstra who raised no concerns with the Regulations. No further public consultation was considered necessary.

The Office of Best Practice and Regulation (OBPR) has advised that a Regulation Impact Statement is not required. The OBPR reference number is 44199.

**ATTACHMENT A**

**Details of the *Long Service Leave (Commonwealth Employees) Amendment (Telstra New Entities) Regulations 2021* (the Regulations)**

Section 1 – Name

This section provides that the title of the instrument is the *Long Service Leave (Commonwealth Employees) Amendment (Telstra New Entities) Regulations 2021.*

Section 2 – Commencement

This section provides for the whole of the instrument to commence the day after this instrument is registered.

Section 3 – Authority

This section provides that the instrument is made under the *Long Service Leave (Commonwealth Employees) Act 1976*(the Act).

Section 4 – Schedules

This section provides that each instrument specified in a Schedule to this instrument is amended 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.

**Schedule 1 – Amendments**

This Schedule provides for the *Long Service Leave (Commonwealth Employees) Regulation 2016* to be amended.

**Item 1 – At the end of Section 7**

This item inserts new subsections (d)-(g) at the end of section 7.

New subsections 7(d)-7(g) provide that for the purposes of subparagraph 4(6)(c)(iii) of the Act, Telstra Group Limited, Telstra International (Aus) Limited, Telstra Limited, Telstra Towerco No. 1 Pty Ltd are each a body corporate to which paragraph 4(6)(c) of the Act applies. The effect of this amendment is that all persons employed by these entities will be employed in ‘Government Service’ for the purpose of the Act.

**ATTACHMENT B**

**Statement of Compatibility with Human Rights**

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

***Long Service Leave (Commonwealth Employees) Amendment (Telstra New Entities) Regulations 2021***

The 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

The purpose of the *Long Service Leave (Commonwealth Employees) Amendment (Telstra New Entities) Regulations 2021* (the Regulations) is to amend the *Long Service Leave (Commonwealth Employees) Regulation 2016* to declare four new entities created by Telstra Corporation Limited to be bodies corporate to which the *Long Service Leave (Commonwealth Employees) Act 1976* applies. This maintains continuity of long service leave entitlements for employees proposed to be transferred between Telstra entities as part of a forthcoming restructure.

**Human rights implications**

The Regulations engage with Article 7 of the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 7 of the ICESCR recognises the right of everyone to the enjoyment of just and favourable conditions of work, including the right to rest, leisure, reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.

The Regulations positively engage the right to the enjoyment of just and favourable conditions of work by ensuring that Telstra employees that transfer to a new entity as part of a proposed restructure will continue to derive their long service leave entitlements from the *Long Service Leave (Commonwealth Employees) Act 1976*.

**Conclusion**

The Regulations are compatible with human rights.

**The Hon Ben Morton MP**

**Assistant Minister to the Prime Minister and Cabinet**

**Parliamentary Secretary to the Prime Minister**