

## EXPLANATORY MEMORANDUM

### **Long Service Leave (Commonwealth Employees) Amendment (Recognising Transferring Employees) Regulations 2023**

#### **Authority**

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.

#### **Background**

The Act makes provision for long service leave entitlements for 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 on separation where the period of service of the person is at least 10 years.

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.

Subsection 7(2) of the Act provides that the regulations may provide that previous employment of an employee in the service of a person, authority, institution or body (including a company), whether incorporated or not, that is referred to in the regulations shall be taken into account for the purposes of section 11 as if it had been employment in Government Service.

Under *Revive*, the Government’s National Cultural Policy, the functions, assets and staff of the Commonwealth company Creative Partnerships Australia Ltd (Creative Partnerships) are transferred to the Australia Council, being a corporate Commonwealth entity.

#### **Purpose and operation**

The purpose of the *Long Service Leave (Commonwealth Employees) Amendment (Recognising Transferring Employees) Regulations 2023* (the Regulations) is to enable the prior employment service of transferring Creative Partnerships’ employees to be recognised as Government Service for the purposes of Commonwealth long service leave entitlements.

By operation of the *Australia Council Amendment (Creative Australia) Act 2023* (the Creative Australia Act), Creative Partnerships was deregistered under the *Corporations Act 2001* and its functions and assets transferred to the Australia Council on 1 July 2023. In addition, Creative Partnerships’ employees are also transferred to the Australia Council on 1 July 2023.

The Creative Australia Act also included a transitional provision for employees transferring from Creative Partnerships to ensure that their prior service is recognised as continuous with their ongoing service at the Australia Council on 1 July 2023.

The Regulations prescribe Creative Partnerships as a recognised previous employer for staff who transfer to the Australia Council on 1 July 2023.

These Regulations confirm the policy intent of the *Australia Council Amendment (Creative Australia) Act 2023*, and as such align with the objectives of *Revive*, the Government's National Cultural Policy.

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*.

### **Consultation**

The Australia Council, the Department of Infrastructure, Transport, Regional Development, Communications and the Arts and the Australian Public Service Commission were consulted on the development of these Regulations.

## **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 (Recognising Transferring Employees) Regulation 2023**

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***

The purpose of the *Long Service Leave (Commonwealth Employees) Amendment (Recognising Transferring Employees) Regulation 2023* is to amend Schedule 2 to the *Long Service Leave (Commonwealth Employees) Regulation 2016* by inserting a new table item at clause 1 of Schedule 2 to the Regulations.

This amendment would avoid all doubt that employees of Creative Partnerships Australia Ltd (Creative Partnerships), a Commonwealth company, who transferred to the Australia Council at the start of 1 July 2023 as a result of the *Australia Council Amendment (Creative Australia) Act 2023*, will have their prior Creative Partnerships service recognised for the purpose of section 11 of the *Long Service Leave (Commonwealth Employees) Act 1976* (the Act) as if it was Government Service. The deregistration of Creative Partnerships took effect on 1 July 2023.

The Regulations will ensure continuity of service for the purposes of providing long service leave entitlements for these transferring employees under the Act..

#### ***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 the Creative Partnership employees transferring to the Australia Council at the start of 1 July 2023 will have their past service with Creative Australia is taken to be Government Service, and as a result they may be eligible to derive long service leave entitlements under the *Long Service Leave (Commonwealth Employees) Act 1976*.

#### ***Conclusion***

This disallowable Legislative Instrument is compatible with human rights.

# LONG SERVICE LEAVE (COMMONWEALTH EMPLOYEES) AMENDMENT (RECOGNISING TRANSFERRING EMPLOYEES) REGULATIONS 2023

## NOTES ON CLAUSES

### Section 1 – Name

This section provides that the name of the instrument is the *Long Service Leave (Commonwealth Employees) Amendment (Recognising Transferring Employees) Regulations 2023*.

### Section 2 – Commencement

This section provides that the Regulations would commence the later of:

- a) the start of the day after the instrument is registered; and
- b) immediately after the commencement of Schedule 1 to the *Australia Council Amendment (Creative Australia) Act 2023*.

### Section 3 – Authority

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

### Section 4 – Schedules

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

## SCHEDULE 1 – Amendments

### **Item 1**

This item inserts a new table item (item 37A) at clause 1 of Schedule 2 to the *Regulation*. The item specifies Creative Partnerships Australia Ltd and that the employment of a person who is taken, under item 10 of Schedule 2 to the *Australia Council Amendment (Creative Australia) Act 2023*, to have been employed by the Australia Council at the start of 1 July 2023. The previous employment is specified to be with Creative Partnerships Australia Ltd (Creative Partnerships).

The new item enables the prior employment of the transferring employees with Creative Partnerships to be considered within the meaning of section 11 of the *Long Service Leave (Commonwealth Employees) Act 1976* as if it was Government Service.