

EXPLANATORY STATEMENT

Public Service Act 1999

Determination under subsection 24(3) –SES employees moved between APS agencies to give effect to the Administrative Arrangements Orders made by the Governor-General in Council on 18 September 2013

Section 24(3) of the *Public Service Act 1999* (PS Act) provides that the Public Service Minister may, by legislative instrument, determine the terms and conditions of employment applying to Australian Public Service (APS) employees, if the Public Service Minister is of the opinion that it is desirable to do so because of exceptional circumstances.

Background

On 18 September 2013, the Governor-General in Council made new Administrative Arrangements Orders in which a number of functions were transferred from an existing APS Agency (**Losing Agency**) to a new or existing APS Agency (**Gaining Agency**).

Section 72 of the PS Act provides for the movement of APS employees affected by an administrative re-arrangement, including an administrative re-arrangement resulting from a change to the Administrative Arrangements Orders. As a result of the re-allocation of a number of functions, the Australian Public Service Commissioner will make determinations pursuant to section 72 of the PS Act moving a number of APS employees (including Senior Executive Service (SES) employees) between APS Agencies.

Effect of the Determination

The Determination has the effect of maintaining the terms and conditions of employment (including remuneration) that applied to an SES employee in a Losing Agency following the move to a Gaining Agency.

Period of operation

The Determination will continue in force until it is replaced in its entirety by another determination made under section 24(3) of the PS Act, or it is revoked.

The Determination will cease to apply to a particular SES employee (or group of SES employees) if either:

- an Agency Head makes a determination pursuant to section 24(1) of the *Public Service Act 1999* setting out the terms and conditions of employment that apply to the employee(s), and that determination is expressed to replace the Determination in its entirety; or

- an Agency Head and the employee enter into a written common law agreement which sets out the terms and conditions of employment that apply to the employee, and that common law agreement is expressed to replace the Determination in its entirety; or
- a *Fair Work Act 2009* enterprise agreement that covers the employee(s) commences operation.

Reasons for making the Determination

The Public Service Minister is of the opinion that it is desirable to make the Determination under subsection 24(3) because of exceptional circumstances as a result of the following circumstances:

- The current Machinery of Government (MoG) changes are of an unusually large scale, potentially affecting the terms and conditions of tens of thousands of employees;
- The current MoG changes are of an unusually large scope, and some further time may be required to accurately establish the destination agency of some employees; and
- The current MoG changes involve the abolition of existing agencies and the creation of new ones, with potentially no terms and conditions in place other than the safety net for employees moving to new agencies until each individual has been allocated to a new agency.

Consultation

In the circumstances, consultation was not necessary because of a requirement to preserve SES employees' terms and conditions of employment as a matter of urgency following the making of new Administrative Arrangements Orders.

Authority: Subsection 24(3) of the *Public Service Act 1999*