

EXPLANATORY STATEMENT

PUBLIC SERVICE ACT 1999 SUBSECTION 24(3)

DETERMINATION UNDER SUBSECTION 24(3)

Subsection 24(3) of the *Public Service Act 1999* (the Act) allows the Public Service Minister, by notice in the *Gazette*, to determine the remuneration and other terms and conditions of employment applying to APS employees, if the Public Service Minister is of the opinion that it is desirable to do so because of exceptional circumstances.

Background

A Heads of Agreement was executed on 24 September 2007 between the Minister for Health and Ageing on behalf of the Commonwealth and the Minister for Health and Human Services on behalf of Tasmania which sets out the terms by which the Tasmanian government will transfer ownership of the Mersey Campus of the North West Regional Hospital of Tasmania to the Commonwealth on 1 November 2007.

The Heads of Agreement relevantly provide that:

- from 1 November 2007 until 30 June 2008, Tasmania will, at the Commonwealth's cost, second all consenting staff of the Mersey Campus of the North West Regional Hospital to the Commonwealth (subject to the provisions of the *State Service Act 2000* (Tas)); and
- the Commonwealth or its nominee will offer employment to the seconded employees for employment commencing on 1 July 2008, on the same financial terms, and with recognition of past service, continuity of service and assumption of liability for accrued leave entitlements.

Under this Determination, the Public Service Minister has set out the mechanism to allow for the remuneration and other conditions of employment of staff engaged as APS employees in what is now the Mersey Campus of the North West Regional Hospital, to be on the same financial terms as existed prior to 1 November 2007.

This Determination is being made due to exceptional circumstances.

The exceptional circumstances arise because Tasmania and the Commonwealth could not agree on secondment arrangements in time for 1 November 2007. As a result, with the prospect of having to engage some 400 staff as APS employees, a mechanism to regulate pay and conditions had to be found and that mechanism had to provide for salaries and conditions of employment on the same financial terms as existed prior to 1 November 2007.

Additionally, the Department of Health and Ageing's current certified agreement does not contain classifications, salary and conditions that suit the type of employment in the Mersey Campus of the North West Regional Hospital (which involves shift work arrangements).

Due to the timing pressures and difficulty in reaching agreement with the Tasmanian government on the transitional employment arrangements, the Public Service Minister was of the opinion that exceptional circumstances were present and that the situation could be resolved by making this Determination.

Consultation

The Determination has been developed in consultation with the Department of Employment and Workplace Relations and the Australian Public Services Commission. Pursuant to caretaker conventions, the Shadow Minister has been consulted. Unions with coverage of staff at the Hospital have also been consulted.

The Determination commences on the day following the date of registration on the Federal Register of Legislative Instruments.

Details of the Determination are provided in Attachment A.

The Determination is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

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

NOTES ON CLAUSES OF THE DETERMINATION

Clause 1

This clause sets out the mechanism to allow for the remuneration and other conditions of employment of the Mersey Hospital APS employees to be on the same financial terms as existed prior to 1 November 2007.

Clause 2

This clause defines the term 'Mersey Hospital APS Employees' as those APS employees in the Department of Health and Ageing who perform duties in the Mersey Hospital, Tasmania.

Clause 3

This clause provides that a reference in clause 1(b) of the Determination to 'same remuneration and other conditions of employment that the employee enjoyed as a Tasmanian State Service employee performing duties at Mersey Campus of the North West Regional Hospital, Tasmania' shall be taken as including a reference to any additional, increased or improved remuneration and conditions of employment that the employee would otherwise be entitled to had the employee remained as an employee of the Tasmanian State Service or been engaged as an employee of the Tasmanian State Service any time up until and including 30 June 2008.