

EXPLANATORY STATEMENT

Public Service Act 1999
Determination under subsection 24(3)

Object of Determination

The object of this determination (*the amending determination*) is to make amendments to a determination made under subsection 24(3) of the *Public Service Act 1999* by the Public Service Minister on 13 March 2008 (*the main determination*) as a consequence of the commencement of the *Fair Work Act 2009* (FW Act).

Rationale for an amending determination and notes on clauses

The amending determination addresses consequential issues which have arisen following the commencement of the FW Act.

The main determination was expressed to the effect that it would only cease to apply if a collective agreement made under the *Workplace Relations Act 1996* (WR Act) starts to operate in the relevant department. The parts of the WR Act relating to agreement making were replaced by the FW Act on 1 July 2009, and as such, it is no longer possible to make a new collective agreement. Instead, enterprise agreements can be made under the FW Act. There was some risk that the wording of the main determination would have had the effect of preventing the operation of an enterprise agreement made under the FW Act in the departments covered by the determination.

Accordingly, the amending determination replaces references to the WR Act with references to the FW Act, references to WR Act collective agreements with FW Act enterprise agreements, and references to the Australian Industrial Relations Commission (AIRC) with references to Fair Work Australia (items 1-6 of the amending determination). It should however be noted that the first reference to the AIRC at paragraph 2 of the main determination needs to remain in place as it refers to provisions in an existing collective agreement.

The Department of Climate Change and the Department of Education, Employment and Workplace Relations had already superseded the main determination by making collective agreements under the WR Act. As the Department of Industry, Innovation, Science and Research and the Department of Resources, Energy and Tourism have recently made new enterprise agreements which commence operation on 3 November 2009, the amending determination removes those departments from the coverage of the main determination by revoking schedule 2 (paragraph (b) of the amending determination) from the date those agreements commence operation. Following the revocation of schedule 2, only the Department of Broadband, Communications and the Digital Economy would remain covered by the main determination.

Item 7 of the amending determination is a minor amendment for clarity.

Consultation

The Department of Education, Employment and Workplace Relations consulted with the Department of Broadband, Communications and the Digital Economy, the Department of Industry, Innovation, Science and Research, the Department of Resources, Energy and Tourism and the Public Service Commission in the drafting of this determination.