

Determination under subsection 24(3) -
Non-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

as amended

made under section 24(3) of the

Public Service Act 1999

**Compilation start date:** 30 January 2014

**Includes amendments up to:** Determination under subsection 24(3) – Non-SES employees - amendment of determination of 18 September 2013 (No. 2)

**About this compilation**

**This compilation**

This is a compilation of the *Determination under subsection 24(3) - Non-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* as in force on 30 January 2014. It includes any commenced amendment affecting the legislation to that date.

This compilation was prepared on 30 January 2014.

The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of each amended provision.

**Uncommenced amendments**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in the endnotes.

**Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

**Modifications**

If a provision of the compiled law is affected by a modification that is in force, details are included in the endnotes.

**Provisions ceasing to have effect**

If a provision of the compiled law has expired or otherwise ceased to have effect in accordance with a provision of the law, details are included in the endnotes.

**Determination under subsection 24(3) – Non-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**

I, Eric Abetz, Minister Assisting the Prime Minister for the Public Service, being of the opinion that it is desirable to do so because of exceptional circumstances, hereby determine pursuant to section 24(3) of the *Public Service Act 1999* the terms and conditions of employment of employees to whom this Determination applies*.*

**Application of Determination**

1. This Determination applies to an APS employee (other than a Senior Executive Service employee) who has been, or will be, moved from an APS Agency (**Losing Agency**) to another APS Agency (**Gaining Agency**) by determination in writing under section 72(1)(a) of the *Public Service Act 1999* in order to give effect to the Administrative Arrangements Orders made by the Governor-General in Council on 18 September 2013 as amended on 3 October 2013 (**Moving Employee**).

2. This Determination also applies to an APS employee (other than a Senior Executive Service employee) who:

 (a) is not a Moving Employee; and

 (b) after the date of this Determination:

 (i) commences employment in a Gaining Agency (whether by engagement as an APS employee pursuant to section 22(1) of the *Public Service Act 1999* or by movement from another APS agency pursuant to section 26 or 27 of the *Public Service Act 1999*); and

 (ii) performs a function that was transferred to that Gaining Agency from a Losing Agency by the Administrative Arrangements Orders made by the Governor-General in Council on 18 September 2013 as amended on 3 October 2013 (**New Employee**).

2A. This Determination applies to an APS employee (other than a Senior Executive Service employee) who will be moved from the Australian Agency for International Development (**AusAID**) to the Department of Foreign Affairs and Trade (**DFAT**) by determination in writing under section 72(1)(a) of the *Public Service Act 1999* to give effect to the order made by the Administrator of the Commonwealth of Australia acting with the advice of the Federal Executive Council on 17 October 2013, pursuant to section 65 of the *Public Service Act 1999*, which has the effect of abolishing AusAID as an Executive Agency on 1 November 2013 (**Moving Aid Employee**).

2B. This Determination will also apply to an APS employee (other than a Senior Executive Service employee) who:

 (a) is not a Moving Aid Employee;

 (b) on or after 1 November 2013:

 (i) commences employment in DFAT (whether by engagement as an APS employee pursuant to section 22(1) of the *Public Service Act 1999* or by movement from another APS agency pursuant to section 26 or 27 of the *Public Service Act 1999*); and

 (ii) performs a function that was transferred from AusAID to DFAT as a result of the order made by the Administrator of the Commonwealth of Australia acting with the advice of the Federal Executive Council on 17 October 2013 (New Aid Employee).

2C. For the purposes of this Determination, in relation to a Moving Aid Employee or New Aid Employee:

 (a) AusAID is the employee’s Losing Agency; and

 (b) DFAT is the employee’s Gaining Agency.

**Period of operation**

3. This Determination takes effect on and from 18 September 2013*.*

4. This Determination will continue in force until:

 (a) it is replaced in its entirety by another determination made under section 24(3) of the *Public Service Act 1999*; or

 (b) it is revoked.

**When the Determination ceases to apply to an employee**

5. This Determination ceases to apply to an employee if:

 (a) an enterprise agreement that covers the employee commences operation; or

 (b) the employee commences employment in an APS agency that is not a Gaining Agency to which the employee was moved by determination in writing under section 72(1)(a) of the *Public Service Act 1999* (whether by engagement as an APS employee pursuant to section 22(1) of the *Public Service Act 1999* or by movement from another APS agency pursuant to section 26 or 27 of the *Public Service Act 1999*).

5A. This Determination ceases to apply to an employee with effect from 30 January 2014 if the employee is an employee in:

 (a) the Attorney-General’s Department; or

 (b) the Australian Trade Commission; or

 (c) the Department of the Environment; or

 (d) the Department of Foreign Affairs and Trade; or

 (e) the Department of Industry; or

 (f) the Department of the Treasury.

5B. However, the annual salary that applies to the employee on 30 January 2014 is the greater of:

 (a) the annual salary that applied to the employee immediately before 30 January 2014; and

 (b) the annual salary that would, apart from this clause, apply to the employee on 30 January 2014.

5C. The annual salary worked out under clause 5B ceases to apply when the salary of the employee is increased by:

 (a) a fair work instrument within the meaning of the *Fair Work Act 2009*; or

 (b) a transitional instrument within the meaning of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009*; or

 (c) a determination under subsection 24(1) or (3) of the *Public Service Act 1999*; or

 (d) a written contract of employment.

**Operation of other instruments**

6. Employees to whom this Determination applies will not be covered by:

 (a) any enterprise agreement (other than an enterprise agreement that commences operation after the date on which this Determination takes effect);

 (b) the *Australian Public Service Award 1998*; or

 (c) any other fair work instrument or WR Act transitional instrument (as those terms are defined in the *Public Service Act 1999*) that would otherwise cover the employee.

**Terms and conditions applying to employees**

7. The terms and conditions of employment (including remuneration) of:

 (a) a Moving Employee shall be the same as they would have been if the Governor-General in Council had not made the Administrative Arrangements Orders on 18 September 2013;

 (b) a New Employee shall be the terms and conditions (including remuneration) contained in the enterprise agreement that, immediately before the Governor-General in Council made the Administrative Arrangements Orders on 18 September 2013, applied to employees in the Losing Agency performing the function to be performed by the New Employee;

 (c) a Moving Aid Employee shall be the same as they would have been if the Administrator of the Commonwealth of Australia had not made the order on 17 October 2013 abolishing AusAID as an Executive Agency;

 (d) a New Aid employee shall be the terms and conditions contained in the *AusAID Enterprise Agreement 2011 – 2014*,

 except that any reference in the terms and conditions to the relevant Losing Agency is substituted with a reference to the relevant Gaining Agency.

8. It is not inconsistent with this Determination for an Agency Head to make a determination pursuant to section 24(1) of the *Public Service Act 1999* supplementing the terms and conditions of employment that apply to an employee by operation of this Determination.

**Policies, guidelines and procedures that applied to the employee in the Losing Agency**

9. This clause 9 applies where the terms and conditions of employment preserved by operation of clause 7 refer to various policies, guidelines and procedures (however described) which applied to the employee’s employment in the Losing Agency. Any such policies, guidelines and procedures:

 (a) will continue to apply to the employee in their current form, except to the extent that a policy, guideline or procedure is not capable of meaningful operation because of the movement of the employee to the Gaining Agency; and

 (b) do not form part of this Determination and this Determination prevails over any policies, guidelines or procedures to the extent of any inconsistency.

Endnotes

Endnote 1—About the endnotes

The endnotes provide details of the history of this legislation and its provisions. The following endnotes are included in each compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnote 5—Uncommenced amendments

Endnote 6—Modifications

Endnote 7—Misdescribed amendments

Endnote 8—Miscellaneous

If there is no information under a particular endnote, the word “none” will appear in square brackets after the endnote heading.

**Abbreviation key—Endnote 2**

The abbreviation key in this endnote sets out abbreviations that may be used in the endnotes.

**Legislation history and amendment history—Endnotes 3 and 4**

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended the compiled law. The information includes commencement information for amending laws and details of application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision level. It also includes information about any provisions that have expired or otherwise ceased to have effect in accordance with a provision of the compiled law.

**Uncommenced amendments—Endnote 5**

The effect of uncommenced amendments is not reflected in the text of the compiled law but the text of the amendments is included in endnote 5.

**Modifications—Endnote 6**

If the compiled law is affected by a modification that is in force, details of the modification are included in endnote 6.

**Misdescribed amendments—Endnote 7**

An amendment is a misdescribed amendment if the effect of the amendment cannot be incorporated into the text of the compilation. Any misdescribed amendment is included in endnote 7.

**Miscellaneous—Endnote 8**

Endnote 8 includes any additional information that may be helpful for a reader of the compilation.

Endnote 2—Abbreviation key

|  |  |
| --- | --- |
| ad = added or inserted | pres = present |
| am = amended | prev = previous |
| c = clause(s) | (prev) = previously |
| Ch = Chapter(s) | Pt = Part(s) |
| def = definition(s) | r = regulation(s)/rule(s) |
| Dict = Dictionary | Reg = Regulation/Regulations |
| disallowed = disallowed by Parliament | reloc = relocated |
| Div = Division(s) | renum = renumbered |
| exp = expired or ceased to have effect | rep = repealed |
| hdg = heading(s) | rs = repealed and substituted |
| LI = Legislative Instrument | s = section(s) |
| LIA = *Legislative Instruments Act 2003* | Sch = Schedule(s) |
| mod = modified/modification | Sdiv = Subdivision(s) |
| No = Number(s) | SLI = Select Legislative Instrument |
| o = order(s) | SR = Statutory Rules |
| Ord = Ordinance | Sub-Ch = Sub-Chapter(s) |
| orig = original | SubPt = Subpart(s) |
| par = paragraph(s)/subparagraph(s)/sub-subparagraph(s) |  |

Endnote 3—Legislation history

| Name | FRLI registration | Commencement | Application, saving and transitional provisions |
| --- | --- | --- | --- |
| Determination under subsection 24(3) – Non-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 | 20 Sept 2013 (*see* F2013L01728) | 18 Sept 2013 |  |
| Determination under subsection 24(3) – Non-SES employees - amendment of determination of 18 September 2013 (No. 1) | 31 Oct 2013 (*see* F2013L01867) | 31 Oct 2013 | — |
| Determination under subsection 24(3) – Non-SES employees - amendment of determination of 18 September 2013 (No. 2) | 29 Jan 2014 (see F2014L00106) | 30 Jan 2014 | — |

Endnote 4—Amendment history

| Provision affected | How affected |
| --- | --- |
| enabling par  | am F2013L01867 |
| c 1  | rs F2013L01867 |
| c 2  | am F2013L01867 |
| c 2A  | ad F2013L01867 |
| c 2B  | ad F2013L01867 |
| c 2C  | ad F2013L01867 |
| hdg to c 5  | ad F2013L01867 |
| c 5  | rs F2013L01867 |
| c 5A  | ad F2014L00106 |
| c 5B  | ad F2014L00106 |
| c 5C  | ad F2014L00106 |
| c 7  | am F2013L01867 |

Endnote 5—Uncommenced amendments [none]

Endnote 6—Modifications [none]

Endnote 7—Misdescribed amendments [none]

Endnote 8—Miscellaneous [none]