

Public Service Act – Determination under subsection 24(3)

Public Service Act 1999

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 on 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 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 (**Moving Employee**).
2. This Determination also applies to an 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 an APS 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 APS agency (the Gaining Agency) from another APS agency (the Losing Agency) by the Administrative Arrangements Orders made by the Governor-General in Council on 18 September 2013,

(**New Employee**).

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.

5. This Determination ceases to apply to an employee if an enterprise agreement that covers the employee commences operation.

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; and
 - (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,
- 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.

Dated: 18 September 2013

Eric Abetz

Minister Assisting the Prime Minister on the Public Service