**EXPLANATORY STATEMENT**

***Public Service Act 1999***

**Determination under subsection 24(3) – Non-SES employees - amendment of determination of 18 September 2013 (No.1)**

Subection 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 to give effect to Machinery of Government change, 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 has made and will make further determinations pursuant to section 72 of the PS Act moving a number of APS employees between APS Agencies.

On 18 September 2013, the Minister Assisting the Prime Minister for the Public Service made a determination (the Determination) under subsection 24(3) of the PS Act in respect of those employees moved to another APS Agency to give effect to the Administrative Arrangements Orders of that date.

On 3 October 2013, the Governor-General in Council made an order amending the Administrative Arrangements Orders made on 18 September 2013. As a result of these amendments, APS employees have been, or will be, moved pursuant to section 72 of the PS Act between APS Agencies.

On 17 October 2013, the Administrator of the Commonwealth of Australia acting with the advice of the Federal Executive Council made an order pursuant to section 65 of the *Public Service Act 1999*, which has the effect of abolishing the Australian Agency for International Development (**AusAID**) as an Executive Agency on 1 November 2013 (**Order**). To give effect to the Order, employees will be moved pursuant to section 72 of the PS Act from AusAID to the Department of Foreign Affairs and Trade (**DFAT**).

**Effect of Amendments to the Determination**

The present determination (the Amendment Determination) will have the effect of amending the determination made by the Minister Assisting the Prime Minister for the Public Service on 18 September 2013 to:

* cover an employee who has been, or will be, moved pursuant to section 72 of the PS Act to give effect to the amendments to the Administrative Arrangement Orders made on 3 October 2013;
* cover an employee of AusAID who will be moved to DFAT to give effect to the Order made by the Administrator of the Commonwealth of Australia on 17 October 2013;
* clarify that the determination will cease to apply to an employee if he or she moves voluntarily to another APS agency.

**Period of operation**

The Amendment Determination will commence on and from 31 October 2013 and will have no retrospective impact on any APS employee.

The Determination (as amended by the Amendment 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 (as amended by the Amendment Determination) will cease to apply to a particular employee (or group of employees) if:

* a new *Fair Work Act 2009* enterprise agreement that covers the employee(s) commences operation; or
* the employee commences employment in an APS agency that is not a Gaining Agency to which the employee was moved pursuant to section 72 of the *Public Service Act 1999*.

**Reasons for making the Determination**

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

* The Machinery of Government (MoG) changes arising from the recent change of Government 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 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*