

EXPLANATORY STATEMENT

Public Service Act 1999

Determination under subsection 24(3)—Non SES employees—amendment of determination of 18 September 2013 (No. 3)

Authority

Subsection 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

Section 72 of the PS Act provides a power for the Australian Public Service Commissioner (the Commissioner) to move APS employees to give effect to an administrative re-arrangement, including a re-arrangement resulting from a change to the Administrative Arrangements Orders (**AAOs**).

On 18 September 2013, the Governor-General in Council made AAOs in which a number of functions were effectively transferred from an existing APS Agency (**Losing Agency**) to a new or different existing APS Agency (**Gaining Agency**).

As a result of these administrative re-arrangements the Commissioner made determinations pursuant to section 72 of the PS Act moving a number of APS employees between agencies (**transferring non SES employees**).

On 18 September 2013, the Minister Assisting the Prime Minister for the Public Service made a determination (**the Principal Determination**) under subsection 24(3) of the PS Act in respect of the terms and conditions of employment of transferring non-SES APS employees. The purpose of the Principal Determination was to preserve the terms and conditions applying to the affected non-SES employees prior to movement. Without the determination their terms and conditions, generally speaking, would have been those of their Gaining Agency.

The Principal Determination was subsequently amended on two occasions to clarify its terms and to include a further class of employees in its coverage and later to remove classes of employees from its coverage.

Purpose of Amendments to the Principal Determination

The present determination (**the Amendment Determination No. 3**) amends the Principal Determination of 18 September 2013 (as amended on 31 October 2013 and 30 January 2014) to remove a further class of employees from coverage: namely, transferring non-SES employees in the Department of Infrastructure and Regional Development (**the Department**). Notes in relation to amending clauses are at attachment A.

The Amendment Determination No.3 provides that, effective from 1 June 2015, the Principal Determination ceases to apply to transferring non-SES employees who are employed in the Department.

Transferring non-SES employees in the Department will cease to have their terms and conditions from their Losing Agency, the former Department of Regional Australia, Local Government, Arts and Sport, preserved, and will become covered by the enterprise agreement that applies in the Department. As these employees, generally speaking, have higher salaries under their former terms and conditions, their salaries will be maintained by Clause 5E of the Amendment Determination No. 3.

Amendment Determination No. 3 will have no retrospective application.

The Principal Determination (as amended) will continue to apply to transferring non-SES employees employed in the following agencies:

- The Department of the Prime Minister and Cabinet;
- The Department of Health;
- The Department of Social Services;
- The Department of Employment; and
- The Department of Education.

Reasons

The Minister was of the opinion that it was desirable to make the Amendment Determination No. 3 under subsection 24(3) of the PS Act because:

- As the effects of the administrative re-arrangements have become clear, the Department has identified that terms and conditions of employment of its transferring non-SES employees are more appropriately determined by the Department's enterprise agreement; and
- The Minister was of the opinion that exceptional circumstances still apply in respect of the agencies which remain covered by the Determination.

Consultation

All agencies with APS employees covered by the Principal Determination were consulted.

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

Notes on Clauses

The instrument sets out amendments to the Principal Determination in the Schedule.

Item 1 to the Schedule inserts 3 new clauses into the Principal Determination.

Clause 5D provides that the Principal Determination ceases to apply to employees of the Department from 1 June 2015.

Clause 5E provides that where an employee is removed from coverage under the Principal Determination by virtue of Amendment Determination No. 3 the annual salary that applies to the employee on 1 June 2015 is the greater of the annual salary that applied to the employee immediately before 1 June 2015 and the annual salary that would otherwise apply to the employee on 1 June 2015. This clause is necessary because when an employee ceases to be covered by the Principal Determination their terms and conditions are generally determined by the enterprise agreement of their employing agency. In some cases, in the absence of this clause, salary under the relevant enterprise agreement could be lower than salary preserved under the Principal Determination.

Clause 5F provides that the salary provided under clause 5E ceases to apply on the occurrence of a range of events, for example a new agency enterprise agreement.