

EXPLANATORY STATEMENT

Public Service Act 1999

Determination under subsection 24(3)— Non-SES employees in the Marine Unit to be moved to the Department of Immigration and Border Protection by determination under paragraph 72(1)(a) of the *Public Service Act 1999* on 1 July 2015

Section 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

From 1 July 2015, the Department of Immigration and Border Protection (**Department**) and the Australian Customs and Border Protection Service (**Customs**) will be consolidated into a single Department of Immigration and Border Protection. At this time, the Australian Border Force, a single frontline operational border agency, will be established.

Section 72 of the PS Act provides for the movement of APS employees affected by an administrative re-arrangement. As a result of the administrative re-arrangements described above, the Australian Public Service Commissioner will make determinations pursuant to section 72 of the PS Act moving a number of APS employees from Customs to the Department with effect from 1 July 2015.

The APS employees who will be moved from Customs to the Department include a group of sea-going marine employees performing crewing, watch or enforcement functions on board Customs and Border Protection sea-going vessels.

Sea going marine employees are currently covered by the *Australian Customs and Border Protection Service Enterprise Agreement 2011-2014* (**Customs Agreement**). The Customs Agreement prescribes particular employment terms and conditions which give effect to deployment and remuneration arrangements required for the effective operation of Customs and Border Protection sea going vessels. The *Department of Immigration and Citizenship Enterprise Agreement 2011-2014* (**Department Agreement**) does not contain appropriate terms reflecting the particular demands placed on sea going marine employees or the operational and deployment flexibility required for the operation of sea going vessels.

Effect of the Determination

The Determination has the effect of:

- maintaining the terms and conditions of employment (including remuneration) that applied to an employee in the Marine Unit in Customs following the move to the Department; and
- applying the terms and conditions of the Customs Agreement employment to any other employee in the Department (whether an existing employee in the Department or a new employee) who is assigned to perform duties in the Marine Unit.

Period of operation

The Determination will continue in force until:

- it is replaced in its entirety by another determination made under section 24(3) of the PS Act that applies to the employees; or
- it is revoked.

The Determination will cease to apply to a particular employee if:

- an enterprise agreement that covers the employee commences operation after the date on which the Determination takes effect.
- the employee is no longer assigned to perform duties in the Marine Unit.

Reasons for making the Determination

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

- The Department Agreement does not contain appropriate terms reflecting the particular duties performed by members in the Marine Unit.
- The Department Agreement is sufficient to provide for the terms and conditions of other APS employees who will be moved from Customs to the Department on 1 July 2015, in accordance with the operation of usual machinery of government arrangements.
- Given the nature of the work of employees in the Marine Unit, continuity of current rostering arrangements is operationally critical.
- These matters cannot be adequately resolved through usual machinery of government arrangements.

Consultation

In the circumstances, consultation was not necessary because of a requirement to preserve Marine Unit employees' terms and conditions of employment as a matter of urgency.

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