

Senate Community Affairs Committee

ANSWERS TO ESTIMATES QUESTIONS ON NOTICE

HEALTH PORTFOLIO

Supplementary Budget Estimates 2013-14, 20 November 2013

Question: E13-232

OUTCOME: 0 - Whole of Portfolio

Topic: Remuneration

Type of Question: Written Question on Notice

Senator: Moore

Question:

Is there a PSC determination that is binding on all departments? Can we get a copy of that on which you are working for the people coming into Health and leaving Health and Ageing? You are welcoming in the people from the Sports Commission, so you have to work with them. Just for the sake of ease, can we get that from you?

Answer:

Attached are copies of the s24 (3) PS Act determinations covering staff transferring between agencies as part of the Machinery of Government changes.

At the Department of Health, Sport staff who transferred from the former Department of Regional Australia, Local Government, Arts and Sport are covered by these determinations.

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

EXPLANATORY STATEMENT

Public Service Act 1999

Determination under subsection 24(3) – 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

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

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 affected by an administrative re-arrangement, 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 will make determinations pursuant to section 72 of the PS Act moving a number of APS employees (including Senior Executive Service (SES) employees) between APS Agencies.

Effect of the Determination

The Determination has the effect of maintaining the terms and conditions of employment (including remuneration) that applied to an SES employee in a Losing Agency following the move to a Gaining Agency.

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, or it is revoked.

The Determination will cease to apply to a particular SES employee (or group of SES employees) if either:

- an Agency Head makes a determination pursuant to section 24(1) of the *Public Service Act 1999* setting out the terms and conditions of employment that apply to the employee(s), and that determination is expressed to replace the Determination in its entirety; or

- an Agency Head and the employee enter into a written common law agreement which sets out the terms and conditions of employment that apply to the employee, and that common law agreement is expressed to replace the Determination in its entirety; or
- a *Fair Work Act 2009* enterprise agreement that covers the employee(s) commences operation.

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 current Machinery of Government (MoG) changes 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 SES 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*

Public Service Act 1999

Determination under subsection 24(3) – 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 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).

Period of operation

2. This Determination takes effect on and from 18 September 2013.
3. 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.
4. This Determination ceases to apply to an employee if:
 - (a) an Agency Head makes a determination pursuant to section 24(1) of the *Public Service Act 1999* setting out the terms and conditions of employment that apply to the employee, and that determination is expressed to replace this Determination in its entirety; or
 - (b) an Agency Head and the employee enter into a written common law agreement which sets out the terms and conditions of employment that apply to the employee, and that common law agreement is expressed to replace this Determination in its entirety; or

- (c) an enterprise agreement that covers the employee commences operation.

~~Operation of other instruments~~

5. 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).

Terms and conditions applying to employees

6. The terms and conditions of employment (including remuneration) of 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, except that any reference in the terms and conditions to the relevant Losing Agency is substituted with a reference to the relevant Gaining Agency.
7. 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

8. This clause 8 applies where the terms and conditions of employment preserved by operation of clause 6 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