

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Public Service

Public Service (Terms and Conditions of Employment) (Biosecurity and Veterinarian Employees) Determination 2020

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

On 19 July 2017, the Fair Work Commission (FWC) approved the *Department of Agriculture and Water Resources Enterprise Agreement 2017-20* (the DAWR Agreement).

On 29 May 2019, the Governor-General renamed the Department of Agriculture and Water Resources the Department of Agriculture¹. On 5 December 2019, the Governor-General abolished the Department of Agriculture with effect on and from 1 February 2020².

On 1 February 2020, APS employees covered by the DAWR Agreement will be moved to the Department of Agriculture, Water and the Environment. This move will be effected under section 72 of the Act.

The purpose of the *Public Service (Terms and Conditions of Employment) (Biosecurity and Veterinarian Employees) Determination 2020* (the Determination) is to preserve some terms and conditions of employment of certain APS employees covered by the DAWR Agreement, to the extent that those terms and conditions relate to specific types of work carried out. The terms and conditions being preserved are specific to APS employees working in the Biosecurity Operations Division and veterinarians. Details of the Determination are included in the Attachment.

The Act provides that the Minister must be of the opinion that it is desirable to determine the terms and conditions of employment applying to APS employees because of exceptional circumstances. The current *Department of Environment and Energy Enterprise Agreement 2016-2019* does not envisage coverage of biosecurity and veterinarian employees or functions. The preservation of particular terms and conditions of their employment is required to ensure that these employees continue to be supported by appropriate terms and conditions of employment necessary for the round-the-clock operations of the biosecurity and veterinarian functions – which require rapid mobilisation to protect Australia from pests and diseases that may affect the economy and environment.

No regulation impact statement is required for the measures contained in the Determination because there is no impact on business or the not for profit sector.

The Department of Agriculture was consulted about the Determination.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination commences on 1 February 2020.

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

¹ <https://www.legislation.gov.au/Details/C2019Q00005>

² <https://www.legislation.gov.au/Details/C2019G01104>

DETAILS OF INSTRUMENT

Public Service (Terms and Conditions of Employment) (Biosecurity and Veterinarian Employees) Determination 2020

Part 1 – Preliminary

Section 1

Section 1 provides that the instrument is the *Public Service (Terms and Conditions of Employment) (Biosecurity and Veterinarian Employees) Determination 2020*

Section 2

Section 2 provides that the instrument commences on 1 February 2020.

Section 3

Section 3 provides that the instrument is made under subsection 24(3) of the *Public Service Act 1999*.

Section 4

Section 4 defines terms used in the instrument.

Part 2 – Biosecurity employees

Section 5

Section 5 provides that the instrument applies to an Australian Public Service (APS) employee who is in the Biosecurity Operations Division (as defined in section 4) and is not an SES employee. It also provides that it does not apply to APS Meat Inspector classified employees.

Section 6

Section 6 provides that part 2 of the instrument ceases to apply to an APS employee if an enterprise agreement (other than the *Department of Environment and Energy Enterprise Agreement 2016-2019* (DEE Agreement) or workplace determination applies to the employee.

Section 7

Section 7 provides that the terms and conditions of employment applying to a Biosecurity employee under this Part are the terms and conditions set out in the DEE (Biosecurity) Agreement (as defined in section 8) and clarifies that they are not any of the terms and conditions of employment set out in the *Department of Environment and Energy Enterprise Agreement 2016-2019* (DEE Agreement).

Enterprise agreements are approved by decision of the Fair Work Commission (FWC) and are published on the FWC's web site. The *Department of Agriculture and Water Resources Enterprise Agreement 2017-20* (the DAWR Agreement) and the DEE Agreement are available at the following Uniform Resource Locator:

- <https://www.fwc.gov.au/document/agreement/AE424941>
- <https://www.fwc.gov.au/document/agreement/AE422332>

Section 8

Subsection 8(1) provides that the DEE (Biosecurity) Agreement means the DEE Agreement as it has effect under section 8.

Paragraph 8(2)(a) provides that a reference in the DEE Agreement to a DEE employee should be read as if it were a reference to biosecurity employee.

Paragraph 8(2)(b) provides that a reference in the DEE Agreement to the Department should be read as if it were a reference to the Department of Agriculture, Water and the Environment.

Paragraph 8(2)(c) omits clauses 1.5 (nominal expiry date) and part of clause 6.10 (approval of at least one period of at least five consecutive days of annual leave per calendar) from the DEE Agreement.

Paragraph 8(2)(d) provides that certain provisions of the DAWR Agreement are included in the DEE Agreement.

Subsection 8(3) provides that provisions of the DEE Agreement about standard working day and bandwidth are omitted and substituted with provisions that mirror the DAWR Agreement.

Subsection 8(3) also incorporates the first salary increase that was provided to DEE employees under the *Determination under subsection 24(1) of the Public Service Act 1999* (DEE Salaries and Allowances Determination) made on 30 September 2019 under subsection 24(1) of the *Public Service Act 1999*. It is anticipated that additional salary increases will be provided through a subsequent subsection 24(1) determination.

Subsection 8(4) provides that provisions of the DEE Agreement about casual loading, meal breaks, shiftwork, fixed daily hours, overtime duty and Christmas closedown are omitted and substituted with DAWR Agreement provisions.

Subsection 8(5) provides that, for the purposes of DAWR Agreement provisions included in the DEE Agreement under paragraph 8(2)(d) and subsection 8(4):

- A reference to an employee is a reference to an employee within the Biosecurity Operations Division;
- A reference to the Department is a reference to the Department of Agriculture, Water and the Environment;
- A reference to the Secretary is a reference to the Secretary of the Department of Agriculture, Water and the Environment;
- A reference to the Act is a reference to the *Fair Work Act 2009*;
- A reference to a standard day is a reference to a standard working day;
- A reference to span of hours is a reference to bandwidth;
- A reference to a public holiday is a reference to a public holiday as defined by the National Employment Standards.

Subsection 8(6) provides substituted provisions for certain DAWR Agreement provisions included in the DEE Agreement under paragraph 8(2)(d) and subsection 8(4).

Subsection 8(7) has the effect of omitting historical veterinarian salary columns from the DAWR Agreement classification tables being included in the DEE Agreement.

Subsection 8(8) has the effect of omitting historical on-plant veterinarian salary columns from the DAWR Agreement classification tables being included in the DEE Agreement.

Subsection 8(9) has the effect of omitting historical veterinarian structure salary columns from the DAWR Agreement classification tables being included in the DEE Agreement.

Subsection 8(10) provides that if a determination under subsection 24(1) of the *Public Service Act 1999* provides for an increased amount of salary for a classification set out in Schedule 1 of the DEE Agreement,

the pay rate that applies under paragraph 8(3)(b) ceases to have effect on the commencement of that determination.

Subsection 8(11) provides that if a determination under subsection 24(1) of the *Public Service Act 1999* provides for an increased amount of allowance set out in Schedule 2 of the DEE Agreement, the allowance rate that applies under paragraph 8(3)(c) ceases to have effect on the commencement of that determination.

Subsection 8(12) provides that if a determination under subsection 24(1) of the *Public Service Act 1999* provides for an increased amount of salary for a classification set out in subsections 8(7), 8(8), or 8(9) (veterinarian classifications and salaries), the pay rate set out in that table ceases to have effect on the commencement of that determination.

Section 9

The purpose of section 9 is to clarify that Division 2, Part 6-2 of the *Fair Work Act 2009* applies in respect of disputes arising under the instrument.

Part 3 – Veterinarian employees who are not biosecurity employees

Section 10

Section 10 provides that the instrument applies to an Australian Public Service (APS) employee who is a veterinarian classified employee who is not in the Biosecurity Operations Division (as defined in section 4) and is not an SES employee.

Section 11

Section 11 provides that Part 3 of the instrument ceases to apply to an APS employee if an enterprise agreement (other than the DEE Agreement) or workplace determination applies to the employee.

Section 12

Section 12 provides that the terms and conditions of employment applying to a veterinarian classified employee under this Part are the terms and conditions set out in the DEE (Veterinarian) Agreement (as defined in section 13) and clarifies that they are not any of the terms and conditions of employment set out in the DEE Agreement.

Enterprise agreements are approved by decision of the FWC and are published on the FWC's web site. The DAWR Agreement and the DEE Agreement are available at the following Uniform Resource Locator:

- <https://www.fwc.gov.au/document/agreement/AE424941>
- <https://www.fwc.gov.au/document/agreement/AE422332>

Section 13

Subsection 13(1) provides that the DEE (Veterinarian) Agreement means the DEE Agreement as it has effect under section 13.

Paragraph 13(2)(a) provides that a reference in the DEE Agreement to a DEE employee should be read as if it were a reference to a veterinarian employee.

Paragraph 13(2)(b) provides that a reference in the DEE Agreement to the Department should be read as if it were a reference to the Department of Agriculture, Water and the Environment.

Paragraph 13(2)(c) omits clauses 1.5 (nominal expiry date) from the DEE Agreement.

Paragraph 13(2)(d) provides that certain provisions of the DAWR Agreement are included in the DEE Agreement.

Subsection 13(3) incorporates the first salary increase that was provided to DEE employees under the DEE Salaries and Allowances Determination made on 30 September 2019 under subsection 24(1) of the *Public Service Act 1999*. It is anticipated that additional salary increases will be provided through a subsequent subsection 24(1) determination.

Subsection 13(4) provides that, for the purposes of DAWR Agreement provisions included in the DEE Agreement under paragraph 13(2)(d):

- A reference to an employee is a reference to a veterinarian employee;
- A reference to the Department is a reference to the Department of Agriculture, Water and the Environment;
- A reference to the Secretary is a reference to the Secretary of the Department of Agriculture, Water and the Environment;
- A reference to the Act is a reference to the *Fair Work Act 2009*;
- A reference to a standard day is a reference to a standard working day;
- A reference to span of hours is a reference to bandwidth;
- A reference to a public holiday is a reference to a public holiday as defined by the National Employment Standards.

Subsection 13(5) provides substituted provisions for certain DAWR Agreement provisions included in the DEE Agreement under paragraph 13(2)(d).

Subsection 13(6) has the effect of omitting historical veterinarian salary columns from the DAWR Agreement classification tables being included in the DEE Agreement.

Subsection 13(7) has the effect of omitting historical previous veterinarian salary columns from the DAWR Agreement classification tables being included in the DEE Agreement.

Subsection 13(8) provides that if a determination under subsection 24(1) of the *Public Service Act 1999* provides for an increased amount of allowance set out in Schedule 2 of the DEE Agreement, the allowance rate that applies under subsection 13(3) ceases to have effect on the commencement of that determination.

Subsection 13(9) provides that if a determination under subsection 24(1) of the *Public Service Act 1999* provides for an increased amount of salary for a classification set out in subsections 8(7), 8(8), or 8(9) (veterinarian classifications and salaries), the pay rate set out in that table ceases to have effect on the commencement of that determination.

Section 14

The purpose of section 14 is to clarify that Division 2, Part 6-2 of the *Fair Work Act 2009* applies in respect of disputes arising under the instrument.