

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Public Service

Public Service (Terms and Conditions of Employment) (General wage increase deferrals during the COVID-19 pandemic) 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.

The COVID-19 pandemic has had a number of significant impacts on the Australian workforce and economy during the first quarter of 2020. These include unprecedented levels of unemployment arising from decisions impacting Australian businesses and individuals.

The Government values the work of the APS and its contribution to supporting measures to contain the spread, mitigate the impacts of COVID-19, and continue to deliver critical services to Australian people.

While many Australians are facing significant economic hardship, it would not be appropriate for those serving the public to be receiving wage increases.

On 26 March 2020, the Government announced a stay on increases in remuneration, entitlements and allowances for all Senior Executive Service employees. This will now be extended to the APS, by way of a pause on salary increases during the COVID-19 pandemic.

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 COVID-19 pandemic makes it appropriate to temporarily delay wage increases in the APS.

The purpose of the *Public Service (Terms and Conditions of Employment) (General wage increase deferrals during the COVID-19 pandemic) Determination 2020* (the Determination) is to provide a six-month delay to APS wage increases occurring during a period of 12 months.

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 Prime Minister has also granted an exemption from the need to complete regulatory impact analysis for all Australian Government measures made in response to COVID-19.

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

The Determination commences on the day after it is registered.

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

DETAILS OF INSTRUMENT

Public Service (Terms and Conditions of Employment) (General wage increase deferrals during the COVID-19 pandemic) Determination 2020

Section 1

Section 1 provides that the instrument is the *Public Service (Terms and Conditions of Employment) (General wage increase deferrals during the COVID-19 pandemic) Determination 2020*.

Section 2

Section 2 provides that the instrument commences on 14 April 2020.

Section 3

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

Section 4

Section 4 defines terms used in the instrument.

This includes the term ***qualifying period*** which is the 12-month period starting on 14 April 2020.

Section 5

Section 5 provides that the instrument does not apply to certain classifications that are equivalent to Senior Executive Service (SES) employee classifications.

Section 6

Section 6 provides that the delayed increase referred to in subsection 7(1) takes effect as soon as practicable after the end of the six-month period. It is the intention that increases deferred for the six-month period are not back-paid. They are delayed for six months.

Section 7

Subsection 7(1) provides that the following increases for non-SES employees are deferred for six months starting on the day that the increase would have arisen, if the increase would have arisen during the qualifying period and does not occur under this instrument:

- salary for non-SES employees;
- allowances that happen on the same day and at the same rate as increases in salary for non-SES employees – otherwise known as salary-related allowances;
- salary for non-SES employees under individual flexibility arrangements; and
- allowances that happen on the same day and at the same rate as increases in salary for non-SES employees under individual flexibility arrangements – otherwise known as salary-related allowances.

The effect of subsection 7(1) is that the increases set out in paragraphs 7(1)(a) to (d) will be delayed by six months.

The intention of paragraph 7(1)(d) is to delay increases to salary and salary-related allowances provided for under individual flexibility arrangements (both current and future arrangements), but not to prevent Agency

Heads from entering into an individual flexibility arrangement. However, individual flexibility arrangements should only be entered into in exceptional circumstances during the COVID-19 pandemic.

The intention of subsection 7(1) is that the delay in increases also applies to Agency Head determinations made under subsection 24(1) of the Act. This will include current and future subsection 24(1) determinations. Subsection 24(5) of the Act provides that a subsection 24(3) determination overrides subsection 24(1) determinations to the extent of any inconsistency.

The intention of subsection 7(1) is that the delay in increases also applies to increases set out in enterprise agreements. This will include current and future enterprise agreements. Section 40 of the *Fair Work Act 2009* (FW Act) provides that a public sector employment law prevails over a fair work instrument that deals with public sector employment, to the extent of any inconsistency. A public sector employment law is defined under the FW Act to include a term of an instrument made under the Act, which is a public sector employment law.

Paragraph 7(2)(a) clarifies that the delay to increases does apply to increases under existing individual flexibility arrangements. Paragraph 7(2)(b) clarifies that the delay to increases also applies to increases under individual flexibility arrangements that were preserved under paragraph 7(2)(d) of the *Public Service (Terms and Conditions of Employment) (Services Australia–Non-SES Employees) Determination 2020*.

Subsection 7(3) provides that certain other increases are not captured by this instrument.

Paragraph 7(3)(a) provides that the delay to increases does not apply to variations of a rate of salary in an award. This instrument does not intend to delay wage increases under awards that occur due to the annual minimum wage decision, including wage increases occurring under the *Australian Public Service Enterprise Award 2015*.

Paragraph 7(3)(b) provides that the delay to increases does not apply to increases arising because a non-SES employee starts performing duties on a temporary or ongoing basis at a higher classification or classifications similar to SES employee classifications set out at section 5. This would include increases arising because a non-SES employee advances through a broadband.

Paragraph 7(3)(c) provides that the delay to increases does not apply to increases arising because of a performance based progression within a non-SES employee's classification.

Paragraph 7(3)(d) provides that the delay to increases does not apply to increases arising because of a non-SES employee's completion of a training program or the obtaining of a qualification.