

EXPLANATORY STATEMENT

Issued by authority of the Minister for the Public Service

Public Service (Terms and Conditions of Employment) (Parliamentary Workplace Support Service) Determination 2024

Subsection 24(3) of the *Public Service Act 1999* 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 Parliamentary Workplace Support Service (PWSS) was established on 23 September 2021 under a determination made under the *Parliamentary Service Act 1999* as a function of the Parliamentary Service Commissioner. On 1 October 2023 it commenced as a statutory agency, with employees seconded from the Department of Finance and the Australian Public Service Commission (APSC). On 29 February 2024, some employees will transfer to the Parliamentary Workplace Support Service. This move will be effected under section 72 of the *Public Service Act 1999*.

The purpose of the *Public Service (Terms and Conditions of Employment) (Parliamentary Workplace Support Service) Determination 2024* (Determination) is to apply the terms and conditions contained in the *Department of Finance Enterprise Agreement 2024-2027* (Finance Agreement) to non-SES APS employees of the Parliamentary Workplace Support Service. The Finance Agreement is incorporated under subsection 14(1) of the *Legislation Act 2003*.

Details of the Determination are included in the Attachment.

The *Public Service Act 1999* provides that the Public Service Minister must be of the opinion it is desirable to determine the terms and conditions of employment applying to APS employees because of exceptional circumstances. The Public Service Minister is of the opinion this Determination is necessary to ensure employees of the Parliamentary Workplace Support Service are provided terms and conditions of employment that are consistent with entitlements that have been bargained as part of APS-wide bargaining and the Finance Agreement. This will provide certainty in terms and conditions for transferring employees.

Consultation

The PWSS has undertaken consultation with staff affected by the Machinery of Government change as well as the Community and Public Sector Union (CPSU). Limited consultation was undertaken on the specific instrument as its purpose is to preserve the current terms and conditions of employment that apply to Department of Finance employees. Those terms and conditions already apply to the majority of transferring employees. The PWSS has responded to feedback provided by employees during consultation.

Impact Analysis

No Impact Analysis is required for the measures contained in the *Public Service (Terms and Conditions of Employment) (Parliamentary Workplace Support Service) Determination 2024* because it does not result in more than a minor change in behaviour or impact for people, business or community organisations.

Exemption from disallowance and sunseting

The *Public Service (Terms and Conditions of Employment) (Parliamentary Workplace Support Service) Determination 2024* is a legislative instrument for the purposes of the *Legislation Act 2003*.

The note contained under subsection 24(3) of the *Public Service Act 1999* clarifies that the disallowance and sunset provisions of the *Legislation Act 2003* do not apply to a determination.

Item 27(b) of Section 10 of the *Legislation (Exemptions and Other Matters) Regulation 2015* (the Legislation Regulations) provides the source of exemption from disallowance. The Explanatory Statement for the Legislation Regulations provide that instruments made under this provision are all internal management tools for Government and should continue to be exempt from disallowance.

A Statement of Compatibility with Human Rights, prepared under subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011* is not required, as paragraph 15J(2)(f) of the *Legislation Act 2003* only requires a Statement to be prepared for disallowable legislative instruments.

Item 54(b) of Section 12 of the Legislation Regulations provides the source of exemption from sunset. The Explanatory Statement for the Legislation Regulations provide that instruments made under this provision are all internal management tools for Government, intended to have ongoing effect, and should continue to be exempt from sunset.

It is essential that an instrument made under subsection 24(3) of the *Public Service Act 1999* continues to be exempt from disallowance and sunset, so that terms and conditions of employment can be established and maintained for affected employees, including, in most cases, where an employee's pre-existing terms and conditions are to apply.

Section 72 of the *Public Service Act 1999* gives the Australian Public Service Commissioner the authority to move employees within the APS to another Agency if the Commissioner is satisfied that it is necessary or desirable to give effect to an administrative re-arrangement. An administrative re-arrangement means any increase, reduction or re-organisation in Commonwealth functions, including one that results from an order by the Governor-General.

Subsection 24(3) of the *Public Service Act 1999* gives the Public Service Minister power, in exceptional circumstances, to determine conditions of employment for affected staff.

Commencement

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) (Parliamentary Workplace Support Service)
Determination 2024*

Section 1 - Name

Section 1 provides that the title of instrument is the *Public Service (Terms and Conditions of Employment) (Parliamentary Workplace Support Service) Determination 2024*.

Section 2 - Commencement

Section 2 provides that the instrument commences on the day after it is registered.

Section 3 - Authority

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

Section 4 - Definitions

Section 4 defines the terms used in the instrument.

Section 5 – Application of the instrument

Section 5 provides that the instrument applies to all non-SES employees employed in the Parliamentary Workplace Support Service under the *Public Service Act 1999*.

Section 6 – When this instrument ceases to apply to Employees

Section 6 provides that the instrument ceases to apply to a non-SES employee if an enterprise agreement, or workplace determination made under the *Fair Work Act 2009* applies to the employee.

Section 7 – Terms and conditions of employment

Subsection 7(1) provides that the terms and conditions of employment of a non-SES employee to whom the instrument applies are the terms and conditions set out in the Finance Agreement. The terms and conditions of the Finance Agreement as in operation immediately before the commencement of the instrument are incorporated under subsection 14(1) of the *Legislation Act 2003*.

Enterprise agreements are approved by decision of the Fair Work Commission and are published on the Fair Work Commission's website. The Finance Agreement is available [here](#).

Paragraph 7(2)(a) provides that a reference to the 'Department of Finance' in the Finance Agreement is a reference to the Parliamentary Workplace Support Service, unless context provides otherwise.

Paragraph 7(2)(b) provides that a reference to 'Finance' in the Finance Agreement is a reference to the Parliamentary Workplace Support Service, unless context provides otherwise.

Paragraph 7(2)(c) provides that a reference to an employee covered by the Finance Agreement in that agreement is a reference to an employee to whom this instrument applies.

Paragraph 7(2)(d) provides that a reference to ‘Secretary of the Department of Finance’ in the Finance Agreement is a reference to the Head of the Parliamentary Workplace Support Service.

Paragraph 7(2)(e) provides that a reference to the ‘Agreement’ in the Finance Agreement is a reference to the Agreement as applied by the instrument, unless context provides otherwise.

Section 8 – Procedure for dealing with disputes

Section 8 provides that clauses 496 to 505 of the Finance Agreement (Dispute Resolution) (as applied by the Determination) is a term or condition of employment applying to an employee to whom this Determination applies and, for the purposes of section 738(d) of the *Fair Work Act 2009*, is a term that provides for a procedure for dealing with disputes arising under the instrument.

Section 9 – Interaction with other determinations made under the PS Act

Section 9 provides that to the extent possible, the instrument is to operate concurrently with any determination made under section 24(1) of the *Public Service Act 1999*, and that the instrument does not prevent a determination made under section 24(1) of the *Public Service Act 1999* increasing the amount of salaries, allowances or other monetary entitlements provided for under the instrument.

Section 10 – Interaction with the NES and the APS Award

Section 10 provides that the instrument has no effect to the extent that it would exclude the National Employment Standards provided for in Part 2-2 of the *Fair Work Act 2009*, and that while the instrument is in force, the *Australian Public Service Enterprise Award 2015* does not apply to non-SES employees in the Parliamentary Workplace Support Service.