

EXPLANATORY STATEMENT

Issued by authority of the Minister for the Public Service

Public Service (Terms and Conditions of Employment) (Defence and Veterans' Services Commission) Determination 2025

Subsection 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.

The Defence and Veterans' Services Commission (Commission) will commence on 29 September 2025 as a Non-Corporate Commonwealth entity pursuant to section 110ZKA of the *Defence Act 1903*. On 17 January 2025, Mr Michael Manthorpe was appointed as the Interim Head of the Commission. Since that time, the Interim Commission has operated with employees seconded or transferred from various Commonwealth Departments and Agencies to the Department of the Prime Minister and Cabinet (Department).

On 29 September 2025, some of these employees of the Department will be moved to the Commission (transferring employees). This move will be effected under section 72 of the PS Act.

The purpose of the *Public Service (Terms and Conditions of Employment) (Defence and Veterans' Services Commission) Determination 2025* (Determination) is to apply the terms and conditions contained in the *Department of the Prime Minister and Cabinet Enterprise Agreement 2024-2027* (PMC Agreement) to non-SES employees of the Commission, with some modifications to adapt the PMC Agreement to the circumstances of the Commission. The PMC Agreement as it existed on 14 March 2024 is incorporated under subsection 14(1) of the *Legislation Act 2003*. The PMC Agreement can be accessed through the Fair Work Commission's website (<https://www.fwc.gov.au>).

Details of the Determination are included in the Attachment.

The PS Act 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 by legislative instrument because of exceptional circumstances. The Public Service Minister is of the opinion this Determination is necessary to ensure employees of the Commission are provided terms and conditions of employment that are consistent with entitlements that have been bargained as part of APS-wide bargaining and the PMC Agreement. This will provide certainty in terms and conditions for transferring employees.

Consultation

The Interim Commission has undertaken consultation with staff proposing to transfer to the Commission 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 non-SES employees of the Department of the Prime Minister and Cabinet. Those terms and conditions already apply to the transferring employees. The Commission 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) (Defence and Veterans' Services Commission) Determination 2025*

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) (Defence and Veterans' Services Commission) Determination 2025* is a legislative instrument for the purposes of the *Legislation Act 2003* (Legislation Act).

The note contained under subsection 24(3) of the PS Act clarifies that the disallowance and sunseting provisions of the Legislation Act 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 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 sunseting. 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 sunseting.

It is essential that an instrument made under subsection 24(3) of the PS Act continues to be exempt from disallowance and sunseting, 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 PS Act 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 PS Act 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 with the Federal Register of Legislation.

Authority: Subsection 24(3) of the PS Act

DETAILS OF INSTRUMENT

*Public Service (Terms and Conditions of Employment) (Defence and Veterans' Services Commission)
Determination 2025*

Section 1 - Name

Section 1 provides that the title of instrument is the *Public Service (Terms and Conditions of Employment) (Defence and Veterans' Services Commission) Determination 2025*.

Section 2 - Commencement

Section 2 provides that the instrument commences on the day after it is registered with the Federal Register of Legislation.

Section 3 - Authority

Section 3 provides that the instrument is made under subsection 24(3) of the PS Act.

Section 4 - Definitions

Section 4 defines the terms used in the instrument.

Section 5 – Application of this Instrument

Section 5 provides that the instrument applies to all non-SES employees employed in the Defence and Veterans' Services Commission under the PS Act. Section 110ZKD of the Defence Act provides that the staff of the Defence and Veterans' Services Commission are to be persons engaged under the PS Act.

Section 6 – When this instrument ceases to apply to Covered Employees

Section 6 provides that the instrument ceases to apply to a non-SES employee to whom the instrument applies 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 PMC Agreement as amended by the instrument and not the APS Award. The terms and conditions of the PMC 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 PMC Agreement can be accessed through the Fair Work Commission's website (<https://www.fwc.gov.au>).

Paragraph 7(2)(a) provides that where the PMC Agreement uses the term 'Agreement' to refer to the Enterprise Agreement, the reference to 'Agreement' is a reference to the Enterprise Agreement as applied by the instrument (unless context provides otherwise).

Paragraph 7(2)(b) provides that a reference to 'the Secretary of the Department of the Prime Minister and Cabinet' in the PMC Agreement is a reference to the Commissioner of the Defence and Veterans' Services Commission.

Paragraph 7(2)(c) provides that a reference to 'Secretary' in the PMC Agreement is a reference to the Commissioner.

Paragraph 7(2)(d) provides that a reference to 'the Department of the Prime Minister and Cabinet' or 'PM&C' in the PMC Agreement is a reference to the Defence and Veterans' Services Commission (unless context provides otherwise).

Paragraph 7(2)(e) provides that a reference to 'Department' or 'Departmental' in the PMC Agreement is a reference to the Defence and Veterans' Services Commission (unless context provides otherwise).

Paragraph 7(2)(f) provides that a reference to an 'employee' in the PMC Agreement is a reference to an employee to whom the instrument applies (unless context provides otherwise).

Paragraph 7(2)(g) provides that a reference to 'commencement of this Agreement' or 'commencement of the Agreement' in the PMC Agreement is a reference to the commencement of the instrument. This is because the commencement of the operation of the Enterprise Agreement is not relevant to the Determination. This has no effect on an employee's terms and conditions of employment.

Paragraph 7(2)(h) provides that clause 4 of the PMC Agreement (which specifies the nominal expiry date of the Enterprise Agreement) is omitted. This is because the nominal expiry date of the Enterprise Agreement is not relevant to the Determination. This has no effect on an employee's terms and conditions of employment.

Paragraph 7(2)(i) provides that clauses 11 – 16 of the PMC Agreement (which set out the procedures for individual flexibility arrangements) are omitted. This is because in accordance with the *Fair Work Act 2009* an individual flexibility arrangement may only be made under the Enterprise Agreement and so the clauses are not relevant to the Determination. The Commissioner can make a determination under subsection 24(1) of the PS Act to determine terms and conditions for individual employees where it is appropriate, having regard to individual circumstances.

An employee may apply for flexible work arrangements in accordance with the Determination and under clause 131 of the PMC Agreement (see also clauses 127 – 163 dealing with flexible work arrangements).

Paragraph 7(2)(j) provides that clauses 18(a) and (b) of the PMC Agreement (which provides that the base salaries in Attachment A of the PMC Agreement include a 4.0 per cent increase from the first full pay period on or after 1 March 2024 (14 March 2024) and 3.8 per cent from the first full pay period on or after 1 March 2025 (13 March 2025)) is omitted. This is because clauses 18(a) and (b) effected a pay increase on 14 March 2024 and 13 March 2025 and no longer have practical effect. The terms and conditions set by the Determination reflect this pay increase and so this has no effect on an employee's terms and conditions of employment.

Paragraph 7(2)(k) provides that clause 82 (which provides for payment of airline lounge membership fees for employees) of the PMC Agreement is amended as follows:

- The sentence "Employees may also purchase a membership at PM&C's discounted corporate rate." is omitted.

Due to the small size of the Commission, it is unlikely to qualify for a discounted corporate rate.

Paragraph 7(2)(l) provides that references to PM&C Consultative Committee' in clauses 128, 342 and 369 of the PMC Agreement are omitted and substituted with Defence and Veterans' Services Commission Consultative Committee, where one is in place'.

Paragraph 7(2)(m) provides that clause 414 of the PMC Agreement (which provides for maintenance of disputes notified under the Department of the Prime Minister and Cabinet Enterprise Agreement 2021 to 2024) is omitted. This is because no employees had notified a dispute for the purposes of clause 452 and so the clause had no work to do. This has no effect on an employee's terms and conditions of employment.

Section 8 – Procedure for dealing with disputes

Section 8 provides that clauses 406 to 415 of the PMC 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 paragraph 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 subsection 24(1) of the PS Act, and that the instrument does not prevent a determination made under subsection 24(1) of the PS Act 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 Defence and Veteran's Services Commission.