



Public Service (Terms and Conditions of Employment) (National Commission for Aboriginal and Torres Strait Islander Children and Young People) Determination 2024

I, Katy Gallagher, Minister for the Public Service, make the following determination.

Dated 12 December 2024

Katy Gallagher
Minister for the Public Service

Contents

1 Name	1
2 Commencement.....	1
3 Authority	1
4 Definitions	1
5 Application of this Instrument.....	2
6 When this Instrument ceases to apply to Covered Employees.....	2
7 Terms and conditions of employment	2
8 Procedure for dealing with disputes	4
9 Interaction with other determinations made under the PS Act.....	4
10 Interaction with the NES and the APS Award	4

1 Name

This instrument is the *Public Service (Terms and Conditions of Employment) (National Commission for Aboriginal and Torres Strait Islander Children and Young People) Determination 2024*.

2 Commencement

This Instrument commences on the day after it is registered.

3 Authority

This Instrument is made under subsection 24(3) of the *Public Service Act 1999*.

4 Definitions

In this instrument:

APS Award means the *Australian Public Service Enterprise Award 2015*.

Commissioner means the Commissioner of the National Commission for Aboriginal and Torres Strait Islander Children and Young People.

Covered Employee means a non-SES employee engaged in the National Commission for Aboriginal and Torres Strait Islander Children and Young People to whom this Instrument applies in accordance with section 5.

National Commission for Aboriginal and Torres Strait Islander Children and Young People means the Executive Agency of that name established under section 65 of the PS Act.

Instrument means the *Public Service (Terms and Conditions of Employment) (National Commission for Aboriginal and Torres Strait Islander Children and Young People) Determination 2024*.

Enterprise Agreement means the *Department of Social Services Enterprise Agreement 2024-2027*, as in operation immediately before the commencement of this Instrument.

Note: The Enterprise Agreement could in 2024 be viewed on the Fair Work Commission's website (<https://www.fwc.gov.au>).

FW Act means the *Fair Work Act 2009*.

NES means the National Employment Standards in Part 2-2 of the FW Act.

PS Act means the *Public Service Act 1999*.

5 Application of this Instrument

This Instrument applies to all non-SES employees engaged in the National Commission for Aboriginal and Torres Strait Islander Children and Young People under the PS Act.

6 When this Instrument ceases to apply to Covered Employees

This Instrument ceases to apply to a Covered Employee if:

- (a) an enterprise agreement starts to apply to the Covered Employee (within the meaning of the FW Act); or
- (b) a workplace determination is made that covers the Covered Employee (within the meaning of the FW Act).

Note: A workplace determination operates from the day on which it is made (see section 276 of the FW Act).

7 Terms and conditions of employment

- (1) The terms and conditions of employment applying to a Covered Employee are the terms and conditions of employment set out in the Enterprise Agreement, as amended by this Instrument.
- (2) The terms and conditions set out in the Enterprise Agreement (as applied by operation of subsection (1)) are amended as follows:
 - (a) where the Enterprise 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 this Instrument (unless context provides otherwise);
 - (b) a reference in the Enterprise Agreement to "the Secretary of the Department of Social Services" is a reference to the Commissioner;
 - (c) a reference in the Enterprise Agreement to "Secretary" is a reference to the Commissioner;
 - (d) a reference in the Enterprise Agreement to "the Department of Social Services" is a reference to the National Commission for Aboriginal and Torres Strait Islander Children and Young People (unless context provides otherwise);
 - (e) a reference in the Enterprise Agreement to "Department" or "Departmental" is a reference to the National Commission for Aboriginal and Torres Strait Islander Children and Young People (unless context provides otherwise);
 - (f) a reference in the Enterprise Agreement to an "employee" is a reference to a Covered Employee;
 - (g) a reference to "commencement of the Agreement" is a reference to the commencement of this Instrument;

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- (h) clause 3 of the Enterprise Agreement (which specifies when the Enterprise Agreement commences) is omitted;
 - (i) clause 4 of the Enterprise Agreement (which specifies the nominal expiry date of the Enterprise Agreement) is omitted;
 - (j) clauses 10 – 15 of the Enterprise Agreement (which sets out the procedures for individual flexibility arrangements) are omitted;
 - (k) clause 18.1 of the Enterprise Agreement (which provides that the base salaries in Attachment A of the Enterprise Agreement include a 4.0 per cent increase from the first full pay period on or after 1 March 2024 (14 March 2024)) is omitted;
 - (l) clauses 20 – 21 of the Enterprise Agreement (which provides for one-off payments when an employee's salary is above the top of the range pay point for their classification upon commencement of the Enterprise Agreement) is omitted;
 - (m) clauses 412 – 414 and Table 2 (which provide for remote locality assistance for certain employees who were in receipt of such assistance on 1 May 2012) are omitted;
 - (n) the references to "Workplace Consultative Forum" in clauses 90, 94 and 154 of the Enterprise Agreement are omitted and substituted with " National Commission for Aboriginal and Torres Strait Islander Children and Young People Consultative Committee, where one is in place";
 - (o) the heading "Workplace Consultative Forum" preceding clause 437 and clauses 437 to 442 of the Enterprise Agreement (which sets out the operation of the Department of Social Service's Workplace Consultative Forum) are omitted and are substituted with the following:

National Commission for Aboriginal and Torres Strait Islander Children and Young People Consultative Committee

The Commissioner may establish a National Commission for Aboriginal and Torres Strait Islander Children and Young People Consultative Committee to discuss relevant workplace matters.

A National Commission for Aboriginal and Torres Strait Islander Children and Young People Consultative Committee will operate subject to an agreed terms of reference and structure for the term of the *Public Service (Terms and Conditions of Employment) (National Commission for Aboriginal and Torres Strait Islander Children and Young People) Determination 2024*. Representation on the committee will be in accordance with the terms of reference.

- (p) clause 452 (which deals with the maintenance of disputes notified under the *Department of Social Services Enterprise Agreement 2018 to 2021*) is omitted.

8 Procedure for dealing with disputes

- (1) For the avoidance of doubt, clauses 444 to 451 of the Enterprise Agreement (which provide for the dispute resolution procedure) (as modified by subsection 7(2) of this Instrument) are:
 - (a) a term or condition of employment applying to a Covered Employee; and
 - (b) for the purposes of paragraph 738(d) of the FW Act, a term that provides for a procedure or dealing with disputes arising under this Instrument.

9 Interaction with other determinations made under the PS Act

- (1) To the extent possible, this Instrument is to operate concurrently with any determination made under subsection 24(1) of the PS Act.
- (2) Without limiting subsection (1), this 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 under this Instrument.

10 Interaction with the NES and the APS Award

- (1) This Instrument has no effect to the extent that it would exclude the NES or any provision of the NES.
- (2) While this Instrument is in force, the APS Award does not apply to Covered Employees.

Note: The effect of this subsection is that this instrument will interact with the APS Award in the same way as an enterprise agreement. See section 57 of the FW Act.