



Public Service (Terms and Conditions of Employment) (Department of Employment and Workplace Relations) Determination 2023

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

Dated 7 December 2023

Katy Gallagher
Minister for the Public Service

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1 Name

This instrument is the *Public Service (Terms and Conditions of Employment) (Department of Employment and Workplace Relations) Determination 2023*.

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:

2022 Determination means the *Department of Employment and Workplace Relations Determination 2022/2 (Non-SES employees) pursuant to section 24(1)* as in force immediately before the commencement of this instrument.

2023 Determination means the *Public Service (Section 24(1)—Department of Employment and Workplace Relations Non-SES Employees) Determination 2023/1*, as in force immediately before the commencement of this instrument.

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

Department means the Department of Employment and Workplace Relations.

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 When this instrument ceases to apply

This instrument will cease to apply in relation to a non-SES employee in the Department if an enterprise agreement is made under the FW Act that covers the employee and commences operation.

Note: This instrument may also be revoked or have its operation affected by a further determination made under subsection 24(3) of the PS Act.

6 Continued application of the 2022 and 2023 Determinations

By force of this instrument, the 2022 Determination and the 2023 Determination continue to apply in relation to non-SES employees in the Department, subject to the modifications specified in Schedule 1 to this instrument.

7 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, including the 2022 Determination and the 2023 Determination to the extent they remain in force after the commencement of this instrument.
- (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.

8 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 non-SES employees in the Department.

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.

Schedule 1—Modifications of 2022 Determination and 2023 Determination

2022 Determination

1 Clause 3

Omit the clause.

2 Clause 4

Omit “This Determination is of no effect to the extent that it reduces the benefit to an Employee of any individual term or condition applicable to the Employee under the National Employment Standards (NES) or the Australian Public Service Enterprise Award 2015 (APS Award).”.

3 Annexure A, subclause 30(b)

Omit the subclause.

4 Annexure A, clause 33

Omit the clause.

5 Annexure A, clause 52

Omit the clause.

6 Annexure A, clause 83

Omit “, which includes payment for any similar entitlement payable under the APS Award”.

7 Annexure A, clause 92

Omit the clause.

8 Annexure A, clauses 122, 123 and 124

Omit the clauses, substitute:

- 122. The ordinary hours for full-time employees are 150 hours per four week settlement period which equates to 7 hours and 30 minutes per day.
- 123. N/A
- 124. For all non-shiftworker employees, the default span of hours (bandwidth) during which an employee may work their ordinary hours is 7:00 am to 7:00 pm, Monday to Friday. This bandwidth may be varied to another 12-hour period where an employee and the employee’s manager agree in writing to that change.

9 Annexure A, clause 133

Omit “(being made up of 147 ordinary hours plus the additional time referred to at clause 122(b))”.

10 Annexure A, at the end of clause 141

Add “or an alternate bandwidth as agreed between the employee and the employer’s manager”.

11 Annexure A, clause 142

Omit “The additional time referred to in clause 122(b) will not be treated as time in excess of ordinary hours, but will be treated as part of an employee's ordinary hours, for the purpose of calculating the employee's flex credit.”.

12 Annexure A, clause 144

Omit “The additional time referred to in clause 122(b) will be treated as part of an employee's ordinary hours, for the purpose of calculating the employee's flex debit.”.

13 Annexure A, clause 145

Omit “The additional time referred to in clause 122(b) will be treated as part of an employee's ordinary hours, for the purpose of calculating any flex leave.”.

14 Annexure A, Definitions, definition of ‘Shiftworker’

Omit “or an employee who chooses to work their ordinary hours between the hours of 6:00 pm and 7:00 pm”.

2023 Determination

15 Section 5, at the end of the definition of ‘DEWR Determination 2022/2 (Non-SES Employees)’

Add “as it continues to apply by force of the *Public Service (Terms and Conditions of Employment) (Department of Employment and Workplace Relations) Determination 2023*”.

16 Section 7

Omit the section.

17 Subsection 8(3)

Omit the subsection.