

23 September 2022

Our Ref: 20140518
Your Ref: AM2014/286

BY EMAIL Chambers.Hatcher.VP@fwc.gov.au

ABN 76 008 556 595
Suite 402, Level 4
Watt Street Commercial Centre
45 Watt Street
NEWCASTLE NSW 2300

PO Box 481
Newcastle NSW 2300
t 1300 565 846
f +61 2 9954 5029

Associate to Vice President Hatcher
Fair Work Commission
Level 10 Terrace Tower
80 William Street
WOOLLOOMOOLOO NSW 2011

Dear Associate

AM2014/286 - 4 YEARLY REVIEW- SUPPORTED EMPLOYMENT SERVICES AWARD 2010

We refer to the above matter and the further directions inviting parties who wish to file proposed draft modifications to the current draft of Schedule B of the *Supported Employment Services Award 2020*, attached to the Full Bench's decision of 20 March 2020 ([2020] FWCFB 1704), to do so by 5:00pm, Friday 23 September 2022.

Please find enclosed the draft modifications to the current drafting of Schedule B (B.1.1(b)) advanced by ABI and the NSW Business Chamber.

In preparing this proposal, we have suggested the inclusion or modification of language by adopting the language used in the Full Bench's decision of 3 December 2019 ([2019] FWCFB 8179).

If you have any questions, please contact Nigel Ward on (02) 9458 7286.

Yours sincerely



Nigel Ward
CEO + Director
Australian Business Lawyers & Advisors Pty Ltd
(02) 9458 7286
nigel.ward@ablawyers.com.au

Encl.

B.1.1

Grades A and B of the classification structure in this Schedule apply to any employee with a disability for whom an employer has created or tailored a job in such a way that they are capable of being performed by a particular person with a particular disability or by persons with a class of disability that does not fall into Grades 1-7 above.

For example, a set of work functions which is capable of being performed as a single job by a single person not relevantly affected by disability is broken up into a number of discrete tasks, each of which will be made into a separate job that aligns with the work capacities of a particular person with a disability or by persons with a class of disability.

This is not the normal case of the employer requiring the employee to perform only a very confined task because the employer considers this to be the most efficient way to conduct its business; rather it is a case of the restricted work capacity of the employee with a disability effectively dictating the nature of the job in which the employer may employ them. The person with a disability does not therefore perform the “whole job” which the relevantly non-disabled person is capable of performing, notwithstanding that the tasks performed by the person with a disability may constitute part of those that might be performed by the relevantly non-disabled person.

B.1.2

Grades 1-7 apply to employees with or without a disability who undertake the duties and exercise the level of skill and responsibility specified in the classification descriptors and they are (subject to any necessary training) capable of performing the full range of duties in the classification descriptors.