

FAIR WORK COMMISSION

Fair Work Act 2009

s 156 – 4 yearly review of modern awards

**IN THE MATTER OF A REVIEW OF THE SUPPORTED EMPLOYMENT SERVICES
AWARD 2010**

AM2014/286

**SUBMISSION OF THE ASSOCIATION OF EMPLOYEES WITH A DISABILITY
INC (AED), UNITED WORKERS' UNION AND THE AUSTRALIAN COUNCIL OF
TRADE UNIONS (ACTU) IN REPLY**

1. The Full Bench has in [2022] FWCFB 203 (the **November 2022 Decision**) asked for submissions in relation to five matters.

The gateway requirements for Grades A and B

2. The parties to this submission (the **employee parties**) support the alterations to the gateway requirements reflected in clause A.1.1 of the draft determination following the November 2022 Decision.
3. Criterion A.1.1(a) serves to distinguish the Grade A and B classifications from the other Award grades and to focus those classifications upon the employees with a disability who the Full Bench intends would perform the work those classifications describe.
4. The employee parties understand that the adjustments arising from the November 2022 Decision contemplated for criterion A.1.1(b) would capture an employment position that has been modified to meet the impairment an employee with a disability has, whether that position be one that is specially created or one that already exists. Reasonable minds might differ however about the meaning of the words “the circumstances of an employee’s disability” in this context. If by referring to “the circumstances” the Full Bench intends to refer to the manifestations of disability that impair and so constrain the work that an employee is, objectively, able to do, the employee parties suggest replacing “circumstances” with “effects” so that the phrase reads, “accommodate the effects of an employee’s disability.” This change would, it is submitted, express the criterion more objectively and in a way that would focus the accommodation idea on an adapted position that has aligned the duties and level of responsibility with the impact the disability has on the employee’s work ability and performance. This change is consistent with the Full Bench’s view of an ADE’s employment purpose and its intention for the alterations it has made to this criterion.

5. The marked up version of the draft determination that accompanies this submission shows the proposed change in clause A.1.1(b).

The operative date for the variations in the transitional arrangements

6. The Full Bench has proposed in paragraph [260] of the November 2022 Decision that the operative date be 1 May 2023 and that full implementation be achieved by 1 May 2026. The manner in which the Grades A and B rates of pay would transition is described in paragraph [261].
7. The employee parties recognise the need for an appropriate transitional period and support the transitional arrangements proposed by the Full Bench, but wish to say something more about the provisional view expressed in paragraph [263] of the November 2022 Decision.
8. In its current form, clause 18.1 of the Award authorises an employer to choose one of the wage assessment tools to determine the percentage of the rate fixed for Grades 1 to 7 for any employee with a disability. One feature of the transitional arrangement discussed in paragraph [263] would be to preserve the pre-1 May 2023 rate of pay derived from whatever wage assessment tool an ADE has chosen to apply until such time as an employee is assessed under the SWS (which may not be until, at the latest, 1 May 2026). The wages structure that will commence on 1 May 2023 is quite different. Employees with a disability will not, as a group, be subject to an employer's choice as to the wage methodology that will be applied to them collectively. Instead, the classification criteria, including through paragraph A.1.1, will turn on the considerations described directly by the Award.
9. Preserving the pre-1 May 2023 rate of pay will preserve the effect of wage methodologies that the Full Bench has decided to discontinue. As a result, an employee who is better off under the new classification system (which will as the Full Bench observes at paragraph [265] include the outcomes of annual wage reviews) will not realise the benefit of this change until he or she is SWS assessed. To ensure that employees receive the benefit the Full Bench intends but also allow a sufficient period for SWS assessment of the industry to be completed without alteration to the wages status quo until it is, the employee parties suggest that the Full Bench include a term in their final determination that would entitle an employee who, upon SWS assessment, is better off to the difference between the pay that, but for the assessment delay, he or she would have been entitled to on and after 1

May 2023 (as transitioned under the determination) less what the employee was paid under the preserved rate during the transition.

10. The marked up version of the draft determination that accompanies this submission shows the proposed clause, which is numbered I.2.3(b) of the draft determination.
11. This approach has five benefits:
 - (a) It will better “ensure” (referring here to section 134(1) of the FW Act) that employees receive the fair and relevant safety net that the Full Bench has decided should apply in the manner they intend.
 - (b) Employees will receive all of the benefit of the variations that the Full Bench has decided they should receive according to the transitional arrangement that comes into force on 1 May 2023.
 - (c) The outcomes of annual pay reviews can be applied in the usual way to the rates actually prescribed by the Award and paid accordingly rather than continue to have the award based minimum wages system applied through the filter of wages tools that will be discontinued. This gives effect to the comprehensive range of minimum wages the Full Bench intends that employees should receive.¹ Doing so also disposes of the need for the presumption referred to in example 1 of paragraph [265].
 - (d) The proposal does not impose any additional costs on ADEs that do not otherwise arise under the variations the Full Bench has decided upon.
 - (e) There is no detriment to the grandparent requirement referred to in paragraph [264], or the viability procedure the Full Bench has in mind and has described in paragraph [266] of the November 2022 Decision.

The timing of SWS assessments

12. The provisional view of the Full Bench is that the timing of automatic SWS reviews clause D.7 under Schedule D of the Award should be changed to 2 years for the initial review following employment and 5 years thereafter. The current prescription is 12 months and 3 years respectively. There would be no change to the entitlement to employee initiated reviews.

¹ See paragraph [270] of the November 2022 Decision.

13. The intention of these changes is to reduce the burden of SWS assessment across the industry given the cost of independent assessments and workforce capacity constraints in relation to the assessors. The Full Bench observes at paragraph [256] that the transitional arrangements will further effect the timing of SWS assessments.
14. In their submission dated 22 July 2022, the employee parties referred in paragraph [14] of that submission to the Dunoon report and in paragraph [15] gave an example from the evidence where work performance had led to greater skill development, albeit in open employment.
15. The substance of the extract from the Dunoon report set out in paragraph [14] was that those with disability increased their performance, and accordingly their productivity, as they developed their skills and competence through job performance as well as modifications that were described as “(often quite small ones) to the job and the work setting.” A post-employment review that increases the review period from 12 months service to 2 years’ service would postpone the realisation of any increased productivity for a further year. An employee initiated review under clause D.7.2(c) would not address this concern. This form of review can only be engaged if there is a job change or a change to the processes involved in the work that is undertaken.
16. The employee parties submit that a review after 12 months of job performance remains an appropriate period to capture any change in performance following employment and should remain in place as the standard once the transitional period is complete. Doing so balances fairness for the employee with the burden of SWS assessment on the Commonwealth.
17. It is accepted that the same rationale does not apply with equal force to the automatic reviews that are presently required after 3 years’ service. However, if the Full Bench’s concern is the potential for automatic reviews to divert scarce resources away from assessments that could otherwise be used to meet the industry wide deadline of 1 May 2026, the employee parties submit that the preferable course is for the Full Bench to suspend automatic reviews during the transitional period and then resume them thereafter or, alternatively, dispense with the 3 yearly automatic review but retain the 12 monthly review.

The redrafting of the definition of supported employment services in connection with the coverage of the SWS Award

18. So far as the employee parties are able to discern, the textual change proposed to the definition of “supported employment service” has only technical significance. The change would call up the definition in section 7 of the *Disability Services Act 1986* by reference and so apply it in the form it stands from time to time in that Act.
19. It is not immediately obvious whether there is much, if any, practical difference arising from the redrafting and for this reason the employee parties do not counsel against its adopted *per se*. A potential difficulty though (which the the employee parties readily accept is hypothetical) is that, subject to section 157 of the FW Act, the Commonwealth would be able to, in effect, alter a coverage term in an employment instrument through an amendment to section 7 of the *Disability Services Act 1986* (which concerns quite different subject matter). This would be so even though the FW Act now stipulates that alterations to coverage terms be made on application by a person with the standing conferred by item 3 of section 158(1). The Commonwealth is unlikely to have standing.
20. These considerations favour the incorporation of section 7 in its present form into the Award, instead of by reference. An additional consideration is section 134(1)(g). This modern awards objective factor tends to favour of drafting that includes all the text of an awards terms in the Award itself to avoid the need to refer to another document or instrument to discern the intended operation of a term, or in this case employer coverage.

30 November 2022

M. Harding SC

S. Kemppi



DRAFT DETERMINATION

Fair Work Act 2009

s.156—4 yearly review of modern awards

4 yearly review of modern awards—*Supported Employment Services Award 2020*

(AM2014/286)

SUPPORTED EMPLOYMENT SERVICES AWARD 2020

[MA000103]

Social, community, home care and disability services

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT SAUNDERS
COMMISSIONER CAMBRIDGE

SYDNEY, XX MONTH 2022

4 yearly review of modern awards – Supported Employment Services Award 2020 – variation to clauses 4, 15 and Schedule A – deletion of clause 18 – insertion of new Schedule I— Transitional Arrangements.

A. Further to the decisions issued by the Full Bench of the Fair Work Commission on 10 November 2022 ([2022] FWCFB 203) and XX DATE 20XX ([20XX] FWCFB XXXX), the above award is varied as follows:

1. By deleting clause 4.3 and inserting the following:

4.3 **Supported employment services** has the meaning given to that term in section 7 of the *Disability Services Act 1986* (Cth).

2. By deleting clause 15 and inserting the following:

15. Minimum rates

15.1 Upon engagement, an employee will be graded by the employer in one of the grades in Schedule A—Classifications in accordance with the provisions of that Schedule, having regard to the employee’s skills, experience and qualifications and the nature of the position in which the employee is employed.

15.2 Subject to clauses 15.3, 15.4 and 15.5 the following minimum rates of pay will apply for the grades set out below:

Grade	Minimum weekly rate (full-time employee)	Minimum hourly rate
	\$	\$
Grade A—from 1 May 2023 to 30 April 2024	180.50	4.75
Grade A—from 1 May 2024 to 30 April 2025	209.00	5.50
Grade A—from 1 May 2025 to 30 April 2026	237.50	6.25
Grade A—from 1 May 2026	266.00	7.00
Grade B—from 1 May 2023 to 30 April 2024	361.00	9.50
Grade B—from 1 May 2024 to 30 April 2025	418.00	11.00
Grade B—from 1 May 2025 to 30 April 2026	475.00	12.50
Grade B—from 1 May 2026	532.00	14.00
Grade 1	812.60	21.38
Grade 2	834.80	21.97
Grade 3	865.20	22.77
Grade 4	893.60	23.52
Grade 5	940.90	24.76
Grade 6	1026.60	27.02
Grade 7	1068.10	28.11

NOTE 1: For the purpose of this award, the hourly rate for all employees will be calculated by dividing the weekly rate by 38, then rounded to the nearest cent.

NOTE 2: See Schedule B—Summary of Hourly Rates of Pay for a summary of hourly rates of pay, including overtime and penalty rates.

15.3 National training wage

- (a) Schedule E to the *Miscellaneous Award 2020* sets out minimum wage rates and conditions for employees undertaking traineeships.
- (b) This award incorporates the terms of Schedule E to the *Miscellaneous Award 2020* as at 1 July 2022. Provided that any reference to “this award” in Schedule E to the *Miscellaneous Award 2020* is to be read as referring to the *Supported Employment Services Award 2010* and not the *Miscellaneous Award 2020*.

15.4 Wage assessment—employees with a disability

- (a) An employee with a disability may be paid such percentage of the rate of pay of the relevant grade in clause 15.2 as assessed under the Supported Wage System in accordance with Schedule D—Supported Wage System.
- (b) **No decrease—regression of disability**

An employee with a disability will not have their rate of pay reduced as a result of a wage assessment made pursuant to clause 15.4(a). This clause does not cover the circumstance where the wage of an employee with a disability may need to be reduced due to the regression of the employee's disability. However, a wage assessment that determines a lower percentage than an earlier wage assessment of the employee against the same duties is of no effect unless the reduction in percentage is solely due to the regression of the employee's disability. Before the wage of an employee may be reduced the employer must exhaust all reasonable training options and options to allocate the employee new tasks to avoid the regression.

15.5 Higher duties

- (a) An employee will be paid at a higher grade if carrying out the duties of a higher grade for 2 or more hours in any shift. They will be paid at the higher grade for the time worked at the higher rate.
- (b) Clause 15.5 will not apply whilst an employee is carrying out work in a higher grade for training purposes only.

3. By deleting clause 18—Wage assessment—employees with a disability.
4. By renumbering clauses 19 to 34 as clauses 18 to 33.
5. By deleting the reference to clause 18.1 in clause 31.4(d) and inserting a reference to clause 15.4(a).
6. By deleting Schedule A—Classification Definitions and inserting the following:

Schedule A—Classifications**A.1 Explanation of Classification Structure**

- A.1.1** Grades A and B of the classification structure in Schedule A—Classifications apply to any employee with a disability who:
 - (a) because of their disability, does not have the capacity to undertake the duties or exercise the level of skill and responsibility of any position to which Grades 1-7 apply; and
 - (b) has been placed in a position by their employer which:

- (i) consists of duties and a level of supervision which accommodate the effects ~~circumstances~~ of the employee's disability; and
- (ii) does not fall into Grades 1-7.

A.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. An employee in any of Grades 1-7 may (subject to any necessary training) be required to perform any or all of the duties in the classification descriptors.

A.2 Classification Definitions

A.2.1 Grade A

Employees at this grade will perform a simple task or tasks consisting of up to 3 sequential steps or sub-tasks, any of which may involve the use of jigs or equipment or tools with basic functionality, under direct supervision and constant monitoring.

A.2.2 Grade B

Employees at this grade will perform a simple task or tasks consisting of more than 3 sequential steps or sub-tasks, each of which may involve the use of mechanical or electric equipment or tools, under direct supervision with regular monitoring.

A.2.3 Grade 1

Employees at this grade will undertake on the job induction and/or training to perform work in Grade 2 or above for a period not exceeding 3 months.

A.2.4 Grade 2

Employees at this grade will perform a basic task or tasks in accordance with defined procedures under direct supervision. Such employees will understand and undertake basic quality control/assurance procedures including the ability to recognise basic quality deviations/faults. This may include the performance of work included in the following awards classifications:

- ▮ *Food, Beverage and Tobacco Manufacturing Award 2020: Level 2*
- ▮ *Gardening and Landscaping Services Award 2020: Level 1*
- ▮ *Manufacturing and Associated Industries and Occupations Award 2020: Level C13*
- ▮ *Textile, Clothing, Footwear and Associated Industries Award 2020: Skill Level 1*

A.2.5 Grade 3

Employees at this grade will perform work above and beyond the skill of an employee at Grade 2 and to their level of training. Such employees will perform a more complex task or tasks than at Grade 2 in accordance with defined procedures under routine supervision. This may include the performance of work included in the following awards classifications:

- ▢ *Dry Cleaning and Laundry Industry Award 2020: Laundry employee level 2*
- ▢ *Food, Beverage and Tobacco Manufacturing Award 2020: Level 3*
- ▢ *Gardening and Landscaping Services Award 2020: Level 2*
- ▢ *Manufacturing and Associated Industries and Occupations Award 2020: Level C12*
- ▢ *Storage Services and Wholesale Award 2020: Storeworker Grade 1*
- ▢ *Textile, Clothing, Footwear and Associated Industries Award 2020: Skill Level 2*
- ▢ *Waste Management Award 2020: Level 2*

A.2.6 Grade 4

Employees at this grade will perform work:

- (a) above and beyond the skill of an employee at Grade 3 and below and to their level of training. Such employees will hold a qualification at or equivalent to AQF II or above or an equivalent level of training and experience. Employees at this grade will:

- ▢ work independently from complex instructions and procedures; and
- ▢ assist in the provision of on the job training for other employees; and
- ▢ co-ordinate work in a team environment or work individually under general supervision; and
- ▢ be responsible for ensuring the quality of their own work; or

- (b) encompassed in any of the following award classifications:

- ▢ *Dry Cleaning and Laundry Industry Award 2020: Laundry employee level 3*
- ▢ *Food, Beverage and Tobacco Manufacturing Award 2020: Level 4*
- ▢ *Gardening and Landscaping Services Award 2020: Level 3*
- ▢ *Manufacturing and Associated Industries and Occupations Award 2020: Level C11*
- ▢ *Storage Services and Wholesale Award 2020: Storeworker Grade 2*
- ▢ *Textile, Clothing, Footwear and Associated Industries Award 2020: Skill Level 3*
- ▢ *Waste Management Award 2020: Level 3*

A.2.7 Grade 5

Employees at this grade will perform work:

- (a) above and beyond the skill of an employee at Grade 4 and below and to their level of training. Such employees will hold a trade certificate or an equivalent qualification or an equivalent level of training and experience. Employees at this grade will perform work primarily involving the skills of their trade and may also perform work that is incidental to that work; or

- (b) encompassed in any of the following award classifications:

- ▢ *Dry Cleaning and Laundry Industry Award 2020: Laundry employee Level 4*
- ▢ *Food, Beverage and Tobacco Manufacturing Award 2020: Level 5*

- *Gardening and Landscaping Services Award 2020: Level 4*
- *Manufacturing and Associated Industries and Occupations Award 2020: Level C10*
- *Storage Services and Wholesale Award 2020: Storeworker Grades 3 and 4*
- *Textile, Clothing, Footwear and Associated Industries Award 2020: Skill Level 4*
- *Waste Management Award 2020: Levels 4, 5 and 6*

A.2.8 Grade 6

Employees at this grade will perform work above and beyond the skill of an employee at Grade 5 and below and to their level of training. Such employees will hold a qualification at or equivalent to AQF IV or above or an equivalent level of training and experience. Such employees will perform the work described below:

- assess the ability of an employee with disability to carry out specific work tasks; and/or
- design, develop and provide individual instruction or training for an employee with a disability; and/or
- undertake specialist functions in the workplace such as procurement or marketing; and/or
- supervise employees in a section of the workplace.

A.2.9 Grade 7

Employees at this grade will hold a qualification at AQF IV to or above, of which one third of the competencies are related to the supervision or training of employees, or an equivalent qualification or an equivalent level of training and experience. Employees at this grade will perform work above and beyond the skill of an employee at Grade 6 and below and to their level of training. Such employees will perform the work described below:

- co-ordinate and supervise employees; and/or
- have responsibility for the content and delivery of training; and
- be capable of operating all of the equipment or tools to be used by employees that they are supervising or training.

7. By deleting clause B.1.3 and inserting the following:

B.1.3 Full-time and part-time employees—ordinary and penalty rates

	Ordinary hours	Saturday	Sunday		Public holidays
			Catering services employees	All other employees	
% of ordinary hourly rate ¹					
	100%	150%	175%	200%	250%
	\$	\$	\$	\$	\$
Grade A—from 1 May 2023 to 30 April 2024	4.75	7.13	8.31	9.50	11.88
Grade A—from 1 May 2024 to 30 April 2025	5.50	8.25	9.63	11.00	13.75
Grade A—from 1 May 2025 to 30 April 2026	6.25	9.38	10.94	12.50	15.63
Grade A—from 1 May 2026	7.00	10.50	12.25	14.00	17.50
Grade B—from 1 May 2023 to 30 April 2024	9.50	14.25	16.63	19.00	23.75
Grade B—from 1 May 2024 to 30 April 2025	11.00	16.50	19.25	22.00	27.50
Grade B—from 1 May 2025 to 30 April 2026	12.50	18.75	21.88	25.00	31.25
Grade B—from 1 May 2026	14.00	21.00	24.50	28.00	35.00
Grade 1	21.38	32.07	37.42	42.76	53.45
Grade 2	21.97	32.96	38.45	43.94	54.93
Grade 3	22.77	34.16	39.85	45.54	56.93
Grade 4	23.52	35.28	41.16	47.04	58.80
Grade 5	24.76	37.14	43.33	49.52	61.90
Grade 6	27.02	40.53	47.29	54.04	67.55
Grade 7	28.11	42.17	49.19	56.22	70.28

¹Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

8. By deleting clause B.1.4 and inserting the following:

B.1.4 Full-time and part-time employees—shiftwork

	Afternoon shift¹ (paid for whole shift)	Night shift² (paid for whole shift)
	% of ordinary hourly rate³	
	115%	130%
	\$	\$
Grade A—from 1 May 2023 to 30 April 2024	5.46	6.18
Grade A—from 1 May 2024 to 30 April 2025	6.33	7.15
Grade A—from 1 May 2025 to 30 April 2026	7.19	8.13
Grade A—from 1 May 2026	8.05	9.10
Grade B—from 1 May 2023 to 30 April 2024	10.93	12.35
Grade B—from 1 May 2024 to 30 April 2025	12.65	14.30
Grade B—from 1 May 2025 to 30 April 2026	14.38	16.25
Grade B—from 1 May 2026	16.10	18.20
Grade 1	24.59	27.79
Grade 2	25.27	28.56
Grade 3	26.19	29.60
Grade 4	27.05	30.58
Grade 5	28.47	32.19
Grade 6	31.07	35.13
Grade 7	32.33	36.54

¹**Afternoon shift** means ordinary hours in a shift which finishes after 6.00pm and at or before 12.00 midnight, Monday to Friday (see clause 22.1).

²**Night shift** means hours in a rotating roster shift which finishes after 12.00 midnight and at or before 8.00am Monday to Friday (see clause 22.2).

³Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

9. By deleting clause B.1.5 and inserting the following:

B.1.5 Full-time and part-time employee—overtime

	Monday to Saturday		Saturday	Sunday	Public holidays
	First 2 hours	After 2 hours	After 12.00 noon where such time is not part of ordinary shift		
	% of ordinary hourly rate ¹				
	150%	200%	200%	200%	250%
	\$	\$	\$	\$	\$
Grade A— from 1 May 2023 to 30 April 2024	7.13	9.50	9.50	9.50	11.88
Grade A— from 1 May 2024 to 30 April 2025	8.25	11.00	11.00	11.00	13.75
Grade A— from 1 May 2025 to 30 April 2026	9.38	12.50	12.50	12.50	15.63
Grade A— from 1 May 2026	10.50	14.00	14.00	14.00	17.50
Grade B— from 1 May 2023 to 30 April 2024	14.25	19.00	19.00	19.00	23.75
Grade B— from 1 May 2024 to 30 April 2025	16.50	22.00	22.00	22.00	27.50
Grade B— from 1 May 2025 to 30 April 2026	18.75	25.00	25.00	25.00	31.25
Grade B— from 1 May 2026	21.00	28.00	28.00	28.00	35.00
Grade 1	32.07	42.76	42.76	42.76	53.45
Grade 2	32.96	43.94	43.94	43.94	54.93
Grade 3	34.16	45.54	45.54	45.54	56.93

	Monday to Saturday		Saturday	Sunday	Public holidays
	First 2 hours	After 2 hours	After 12.00 noon where such time is not part of ordinary shift		
	% of ordinary hourly rate ¹				
	150%	200%	200%	200%	250%
Grade 4	35.28	47.04	47.04	47.04	58.80
Grade 5	37.14	49.52	49.52	49.52	61.90
Grade 6	40.53	54.04	54.04	54.04	67.55
Grade 7	42.17	56.22	56.22	56.22	70.28

¹Rates in table are calculated based on the minimum hourly rate, see clauses B.1.1 and B.1.2.

10. By deleting clause B.2.2 and inserting the following:

B.2.2 Casual employees—ordinary and penalty rates

	Ordinary hours	Saturday	Sunday	
			Catering services employees	All other employees
	% of casual ordinary hourly rate ¹			
	100%	150%	175%	200%
	\$	\$	\$	\$
Grade A—from 1 May 2023 to 30 April 2024	5.94	8.91	10.40	11.88
Grade A—from 1 May 2024 to 30 April 2025	6.88	10.32	12.04	13.76
Grade A—from 1 May 2025 to 30 April 2026	7.81	11.72	13.67	15.62
Grade A—from 1 May 2026	8.75	13.13	15.31	17.50
Grade B—from 1 May 2023 to 30 April 2024	11.88	17.82	20.79	23.76
Grade B—from 1 May 2024 to 30 April 2025	13.75	20.63	24.06	27.50

	Ordinary hours	Saturday	Sunday	
			Catering services employees	All other employees
% of casual ordinary hourly rate ¹				
	100%	150%	175%	200%
Grade B—from 1 May 2025 to 30 April 2026	15.63	23.45	27.35	31.26
Grade B—from 1 May 2026	17.50	26.25	30.63	35.00
Grade 1	26.73	40.10	46.78	53.46
Grade 2	27.46	41.19	48.06	54.92
Grade 3	28.46	42.69	49.81	56.92
Grade 4	29.40	44.10	51.45	58.80
Grade 5	30.95	46.43	54.16	61.90
Grade 6	33.78	50.67	59.12	67.56
Grade 7	35.14	52.71	61.50	70.28

¹ **Casual ordinary hourly rate** includes the casual loading payable for all purposes. Any all-purpose allowances applicable need to be added to these rates, see clauses B.1.1 and B.1.2.

11. By deleting clause B.2.3 and inserting the following:

B.2.3 Casual employees—shiftwork

	Afternoon shift ¹ (paid for whole shift)	Night shift ² (paid for whole shift)
	% of casual ordinary hourly rate ³	
	115%	130%
	\$	\$
Grade A—from 1 May 2023 to 30 April 2024	6.83	7.72
Grade A—from 1 May 2024 to 30 April 2025	7.91	8.94
Grade A—from 1 May 2025 to 30 April 2026	8.98	10.15
Grade A—from 1 May 2026	10.06	11.38
Grade B—from 1 May 2023 to 30 April 2024	13.66	15.44

	Afternoon shift¹ (paid for whole shift)	Night shift² (paid for whole shift)
	% of casual ordinary hourly rate³	
	115%	130%
Grade B—from 1 May 2024 to 30 April 2025	15.81	17.88
Grade B—from 1 May 2025 to 30 April 2026	17.97	20.32
Grade B—from 1 May 2026	20.13	22.75
Grade 1	30.74	34.75
Grade 2	31.58	35.70
Grade 3	32.73	37.00
Grade 4	33.81	38.22
Grade 5	35.59	40.24
Grade 6	38.85	43.91
Grade 7	40.41	45.68

¹ **Afternoon shift** means ordinary hours in a shift which finishes after 6.00pm and at or before 12.00 midnight, Monday to Friday (see clause 22.1).

² **Night shift** means hours in a rotating roster shift which finishes after 12.00 midnight and at or before 8.00am Monday to Friday (see clause 22.2).

³ **Casual ordinary hourly rate** includes the casual loading payable for all purposes. Any all-purpose allowances applicable need to be added to these rates, see clauses B.1.1 and B.1.2.

12. By deleting Schedule D—Supported Wage System and inserting the following:

Schedule D—Supported Wage System

D.1 This schedule defines the conditions which will apply to an employee who meets the eligibility criteria in clause D.3 and who is the subject of a wage assessment using the Supported Wage System under clause 15.4(a).

D.2 In this schedule:

approved assessor means a person accredited by the management unit established by the Commonwealth under the supported wage system to perform assessments of an individual’s productive capacity within the supported wage system

assessment instrument means the tool provided for under the supported wage system that records the assessment of the productive capacity of the person to be employed under the supported wage system

relevant minimum wage means the minimum wage prescribed in this award for the class of work for which an employee is engaged

supported wage system (SWS) means the Commonwealth Government system to promote employment for people who cannot work at full award wages because of a disability, as documented in the Supported Wage System Handbook. The Handbook is available from the following website: www.jobaccess.gov.au

SWS wage assessment agreement means the document in the form required by the Department of Social Services that records the employee's productive capacity and agreed wage rate

workplace data means data collected by an employer with respect to an employee's productive capacity in accordance with the Supported Wage System Handbook

D.3 Eligibility criteria

D.3.1 This schedule applies to employees with a disability who are unable to perform at the required productive capacity because of the effects of a disability.

D.3.2 This schedule does not apply to any existing employee who has a claim against the employer which is subject to the provisions of workers compensation legislation or any provision of this award relating to the rehabilitation of employees who are injured in the course of their employment.

D.4 Supported wage rates

D.4.1 Employees to whom this schedule applies will be paid the higher of the following amounts:

(a) a percentage of the relevant minimum hourly rate of pay equal to the assessed productive capacity of the employee determined in accordance with clause D.5 rounded to the nearest whole percentage; and

(b) **\$2.75** per hour.

D.4.2 For the avoidance of doubt, there is no minimum amount payable to an employee per week.

D.5 Assessment of capacity

D.5.1 For the purpose of establishing the percentage of the relevant minimum wage, the productive capacity of the employee will be assessed in accordance with the Supported Wage System by an approved assessor, having consulted the employer and employee and, if the employee so desires, a person identified in clause 31.3.

D.5.2 The productivity benchmark(s) used for the conduct of an SWS assessment must:

(a) take into account the major task(s) performed by the employee; and

(b) be independently verified by an SWS assessor as being valid and appropriate.

D.5.3 All assessments made under Schedule D—Supported Wage System must be documented in an SWS wage assessment agreement, and retained by the employer as a time and wages record in accordance with the Act.

D.5.4 The approved assessor will assess the productive capacity of the employee having regard to:

(a) where an employer has collected workplace data with respect to an employee:

(i) the workplace data—50% weighting; and

(ii) the data collected by the approved assessor in accordance with the Supported Wage System—50% weighting;

(b) otherwise—the data collected by the approved assessor in accordance with the Supported Wage System.

D.5.5 Where, in undertaking an assessment in accordance with clause D.5.4(a), there is a disparity of greater than 20% between the overall productivity percentage calculated from the workplace data and the overall productivity percentage calculated from the data collected by the approved assessor, the employee, employer and approved assessor may agree to collect additional data. The additional data should be collected as soon as practicable and added to the existing data with respect to the employee for the purpose of undertaking the assessment in clause D.5.4(a).

D.5.6 In addition to an employee's general right to access clause 31—Dispute resolution in relation to the process or outcome of a wage assessment, an employee or an employer may:

(a) raise a dispute in accordance with the dispute processes outlined in the Supported Wage System Handbook; and

(b) after exhausting the process provided in clause D.5.6(a), raise a dispute in relation to the assessment of the employee's assessed productive capacity in accordance with clause 30—Dispute resolution. In those circumstances, the Commission may, in exercising its powers under clause 30.6, make a determination as to the employee's productive capacity, having regard to the reasonableness of the workplace data and the data collected by the approved assessor and fairness between the parties in all of the circumstances.

D.6 Lodgment of SWS wage assessment agreement

D.6.1 All SWS wage assessment agreements under the conditions of Schedule D—Supported Wage System, including the appropriate percentage of the relevant minimum wage to be paid to the employee, must be lodged by the employer with the Fair Work Commission.

D.6.2 All SWS wage assessment agreements must be agreed and signed by the employee and employer parties to the assessment. Where a union which has an interest in the award is not a party to the assessment, the assessment will be referred by the Fair Work

Commission to the union by email to the union's nominated email address and the agreement will take effect unless an objection is notified to the Fair Work Commission within 10 working days.

D.7 Review of assessment

For the purpose of clause 15.4(a):

- D.7.1** the wage assessment of each employee will be reviewed after 12 months ~~2 years~~² service with the employer since the initial assessment, and the rate of pay adjusted accordingly;
- D.7.2** subsequently, the wage assessment of each employee will be reviewed within a period not exceeding 5 years' service with the employer since the previous assessment, and the rate of pay adjusted accordingly; and
- D.7.3** a wage assessment may be reviewed at the initiative of either the employee or the employer, once every six months and not more than four times every three years, and the rate of pay adjusted accordingly. Such a review may only be initiated in circumstances where an employee has changed jobs or the processes involved in the work undertaken by the employee have changed.

D.8 Other terms and conditions of employment

Where an assessment has been made, the applicable percentage will apply to the relevant minimum wage only. Employees covered by the provisions of Schedule D—Supported Wage System will be entitled to the same terms and conditions of employment as other workers covered by this award on a pro rata basis.

D.9 Workplace adjustment

An employer wishing to employ a person under the provisions of Schedule D—Supported Wage System must take reasonable steps to make changes in the workplace to enhance the employee's capacity to do the job. Changes may involve re-design of job duties, working time arrangements and work organisation in consultation with other workers in the area.

D.10 Trial period

- D.10.1** In order for an adequate assessment of the employee's capacity to be made, an employer will employ a person under the provisions of Schedule D—Supported Wage System for a trial period of at least 13 weeks, but no longer than 26 weeks.
- D.10.2** During that trial period the assessment of capacity will be undertaken and the percentage of the relevant minimum hourly rate of pay for a continuing employment relationship will be determined in accordance with clause D.4 and clause D.5.
- D.10.3** The employee must be paid at least **\$2.75** per hour for each hour worked during the trial period.

D.10.3 Once an assessment of capacity has been undertaken pursuant to clause D.5 and the employee's rate of pay is determined in accordance with clause D.4, the employer will apply any higher rate of pay determined in accordance with clause D.4.1 with effect from thirteen weeks after the commencement of the trial period.

D.10.4 Work trials should include induction or training as appropriate to the job being trialled.

13. By inserting Schedule I—Transitional Arrangements as follows:

Schedule I—Transitional Arrangements

I.1 No reduction in hourly wage rate

An employer shall not reduce the hourly wage of any employee employed as at 1 January 2023 by reason of their:

I.1.1 classification or reclassification into Grade A or B; or

I.1.2 initial SWS assessment in the period from 1 May 2023 to 1 May 2026.

I.2 Initial SWS assessment during the transition period

I.2.1 This clause applies to any employee employed as at 1 May 2023 (to whom Schedule D—Supported Wage System applies) who has not been the subject of a SWS assessment prior to 1 May 2023.

I.2.2 The employee must be subject to an initial SWS wage assessment before 1 May 2026. Despite clause D.7.1, once this is done no further SWS wage assessment is required for a period of three years following this unless clause D.7.3 applies.

I.2.3 Until a SWS wage assessment occurs, despite clause 15.2 an employee shall remain on their current wage rate (the **current rate**) provided that:

(a) the current rate is adjusted by the same percentage amount and at the same time as any adjustment to the Grade 2 rate in this award as a result of any Annual Wage Review; and

(b) if upon SWS assessment the assessed employee's wage rate is greater than the current rate, the employee shall be paid a sum representing the difference between what would have been payable under the assessed rate during the period between 1 May 2023 and the date the SWS assessment occurs and what was paid to the employee.

I.2.4 Any new employee must be subject to a SWS wage assessment in accordance with clause D.10.

14. By updating the table of contents and cross-references accordingly.

B. This determination comes into operation on 1 May 2023. In accordance with s165(3) and s.166(5) of the *Fair Work Act 2009* this determination does not take effect in relation to a particular employee until the start of the employee's first full pay period that starts on or after 1 May 2023.

VICE PRESIDENT