

**IN THE MATTER OF A REVIEW OF THE SUPPORTED EMPLOYMENT SERVICES  
AWARD 2010  
AM2014/286**

**JURISDICTIONAL OBJECTIONS OF THE ASSOCIATION OF EMPLOYEES  
WITH DISABILITY INC T/A AED LEGAL CENTRE (AED)**

1. This document is filed by AED pursuant to paragraph 2(b) of the Full Bench’s directions dated 15 February 2022. The phrase “Grade A and B Terms” refers to Annexure A<sup>1</sup> and the following content therein: clause B.1.1; B.2; B.3; the words “nature of the position in which the employee is employed” in clause 14.1; and the classifications in clause 14.2 labelled Grade A and B.<sup>2</sup>
2. AED contends that variation of the *Supported Employment Services Award 2020* (the **Award**) to include the Grade A and B Terms would exceed the variation authority conferred by section 156(2)(b)(i) of the FW Act<sup>3</sup> on the ground that:
  - (a) properly construed, the Grade A and B Terms would not constitute terms that “merely” provide for minimum wages for all or a class of “employees with a disability” (as defined in section 12 of the Fair Work Act 2009 (the **FW Act**)) within the meaning of section 153(3) of that Act;
  - (b) accordingly, the Grade A and B terms are prohibited by section 153(1) of the FW Act, in that those terms would discriminate against employees because of mental or physical disability.
3. AED contends that variation of the Award to include the Grade A and B Terms would exceed the authority conferred by section 156(2)(b)(i) of the FW Act unless the Full Bench responds to AED arguments that:
  - (a) those terms should not be included in the Award for employees to whom clause B.1.1 of Annexure A would apply because:
    - (i) they would not establish minimum wages for those employees;
    - (ii) would not ensure or establish a fair or relevant safety net of minimum wages for those employees, having regard to the safety net that has been established for the same employees, or class thereof, covered by other modern awards and the second special National Minimum Wage;
  - (b) it would be futile to include those terms in the Award because they would be liable to removal pursuant to section 161 of the FW Act.

**16 MARCH 2022**

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<sup>1</sup> Annexure A is an annexure to the Full Bench decision in [2019] FWCFB 8179 dated 3 December 2019.

<sup>2</sup> As refined in the Full Bench decision of 30 March 2020 [2020] FWCFB 1704.

<sup>3</sup> In the form preserved by operation of clause 26 of Schedule 1 of the *Fair Work Amendment (Repeal of 4 Yearly Reviews and Other Measures)* Act 2018.