

IN THE FAIR WORK COMMISSION
4 YEARLY REVIEW OF THE MODERN AWARDS
SUPPORTED EMPLOYMENT SERVICES AWARD 2020
(AM2014/286)

OUTLINE OF SUBMISSIONS

FILED ON BEHALF OF:
AUSTRALIAN BUSINESS INDUSTRIAL
NSW BUSINESS CHAMBER
NATIONAL DISABILITY SERVICES

30 November 2022

BACKGROUND

1. On 10 November 2022, the FWC handed down its most recent decision (the **November Decision**) which is intended to finalise, subject to issues concerning transitional provisions and other technical matters, the 4 yearly review in respect of the provisions of the *Supported Employment Services Award 2020* (the **Award**) concerning minimum wage rates for employees with a disability.
2. The FWC have also issued a Draft Determination (the **Draft Determination**) on 10 November 2022 which gives effect to its November Decision (including the provisional views expressed throughout).
3. The November Decision contained provisional views in relation to the following matters:
 - (a) drafting amendments to the 'gateway' requirements for Grades A and B;
 - (b) the proposed operative date and transitional arrangements relating to the implementation of the new wages structure;
 - (c) the proposed alteration of the requirements as to the timing of SWS assessments; and
 - (d) the proposed redrafting of the definition of "supported employment services".
4. Parties have been invited to file submissions on the above provisional views as well as any drafting issues identified in the Draft Determination.
5. This submission addressed those matters as follows.
6. This submission is filed on behalf of Australian Business Industrial (**ABI**), the NSW Business Chamber Ltd (**NSWBC**) and National Disability Services (**NDS**) in accordance with the Directions of the Commission issued on 10 November 2022.

THE MODIFICATION TO THE "GATEWAY" REQUIREMENTS FOR GRADES A AND B

7. At paragraph [246] of the November Decision, the FWC express the provisional view that the current expression of the third criterion should be changed so that it applies in respect

of an employee who has been placed by their employer in a position which consists of duties and a level of supervision which accommodate the circumstances of the employee's disability, and which does not fall into Grades 1-7.

8. Our clients do not see any issue with the FWC's proposed re-drafting of the "gateway" requirements for Grades A and B. This being the case, we do not have any further submissions in relation to this point.

THE OPERATIVE DATE FOR THE VARIATIONS AND THE TRANSITIONAL ARRANGEMENTS

9. The Full Bench have expressed the provisional view that the operative date for the variations to the Award should come into effect from 1 May 2023. The FWC have also proposed a three-year transitional arrangement to occur between 1 May 2023 and 1 May 2026 to phase-in the new wage rates for Grades A and B.

Operative Date

10. Our clients seek a modest deferral of the commencement date to 1 July 2023.
11. This request is advanced on the following grounds:
 - (a) *First*, given the time of year and the impending festive season period and associated Christmas close down / leave period, many employers who will be affected by this matter may not become aware of the outcome until January 2023 and may not be in a position to meaningfully take steps to prepare for the commencement of the changes until mid to late-January 2023.
 - (b) *Second*, the evidence discloses that there continues to be a degree of confusion and uncertainty around the 'gateway' requirements for Grades A and B (which are proposed to be the subject of further drafting modification). Employers will likely require a reasonable (but not extensive) period of time to come to terms with the new classification structure. While employer and industry bodies will be able to assist with guidance material and advice, the time of year poses some challenge in

this regard. Realistically, it is unlikely that employers will commence the transition work until February 2023.

- (c) *Third*, while three months (February to end of April 2023) may be sufficient for smaller ADEs to grade their employees, larger ADEs with hundreds or more than 1,000 supported employees may face considerable challenges in grading all employees by 1 May 2023. For organisations with 1,000 or more supported employees dispersed over multiple sites, the extent of the grading task should not be underestimated. Such a task would consist of training a group of existing supervisory staff to undertake the grading process, and then each supervisor reviewing the tasks performed by each employee and making an assessment as to where that employee falls within the classification structure. In some cases, it might involve personally observing the employee for a period of time or reviewing notes or personnel files to ascertain the types of tasks typically performed by the employee (which might vary from time to time). In some cases, it might be necessary to observe employees over multiple days to ensure a correct grading. Given the importance of the grading process, the ADE might then wish to review, check or audit the results to ensure consistency in application. The staff involved in this work are existing employees who currently have full-time workloads. Therefore, it will likely be challenging for them to both achieve well-informed and consistent grading results, and complete the large number of gradings required in short timeframes. This work will also need to be completed at a time of workforce shortages.
- (d) *Fourth*, it will be critical that employers properly consult with supported employees and their parents/carers to ensure the transition to the new wages structure is successful. Time and effort will be needed to ensure that employees understand:
- (i) the changes to the Award and, in many cases, the changes to the way in which employees' wages are determined; and

- (ii) the changes that are likely to occur in relation to their terms and conditions of employment.

12. For these reasons, we seek a commencement date of 1 July 2023.

Transitional arrangements

13. Although the transitional period is considerably shorter than the 8-year period sought by our clients, we acknowledge the Full Bench's comment at [266] that:

Because of the cost implications of the introduction of the new wages structure, we propose to carefully monitor its implementation during the course of the transitional period. If there is evidence that the implementation of the new wages structure is endangering the viability of ADEs (generally or in a particular case), this should be brought to the attention of the Commission and the Commission will, on application or on its own initiative, consider appropriate variations to the transitional arrangements or any other relevant aspect of the SES Award pursuant to s 157 of the FW Act.

14. Our clients take comfort in the Commission's preparedness to reconsider the transitional arrangements in the event that they challenge the ongoing viability of ADEs. In the circumstances, our clients are not opposed to the provisional views concerning the three-year transitional arrangements.

THE ALTERATION OF THE REQUIREMENTS AS TO THE TIMING OF SWS ASSESSMENTS

15. At paragraph [256] of the November Decision, the Full Bench recognise that the frequency with which SWS assessments must be conducted across the ADE sector will impact, in a given year, upon the cost of those assessments and the capacity to provide sufficient independent assessors.

16. Under the current drafting of the Award, clause D.7.2(a) of Schedule D provides that the SWS assessment of an employee will be reviewed after 12 months' service since the initial

assessment. Clause D.7.2(b) provides that the SWS assessment must be reviewed thereafter with 3 years.

17. The Full Bench have expressed the provisional view that the above time periods should be changed to 2 years and 5 years respectively.
18. Our clients are supportive of this proposal. We also agree that alteration to the time periods would likely assist with reducing the burden of assessments on the industry.

THE REDRAFTING OF THE DEFINITION OF “SUPPORTED EMPLOYMENT SERVICES” IN CONNECTION WITH THE COVERAGE OF THE AWARD

19. The Full Bench expressed a provisional view at [273] of the November Decision that clause 4.3 of the Award should be varied to define the term “Supported employment services” by reference to section 7 of the *Disability Services Act 1986* (Cth) (the **DS Act**).
20. Our clients are concerned about the appropriateness (and potential longevity) of this definition, given the term is defined by reference to exterior legislation which may be amended or repealed at some future point in time.
21. This issue was first considered in the December 2019 decision, and at that time the Full Bench appeared to hold (on a provisional basis) that the statutory definition should be placed directly into the Award:

[386] The earlier submission of the Department concerning the coverage of the SES Award are noted. Our provisional view is that no change to the definition of “supported employment services” in clause 3.1, by which the coverage of the award as expressed in clause 4.1 operates, is required. As explained at the outset of this decision, the award definition incorporates by reference the definition of “supported employment services” contained in s 7 of the Disability Services Act 1986. We do not consider that the change to the funding model for ADEs which we have earlier described has altered the validity of this definition. However, to ensure that the coverage of the SES Award is not inadvertently altered by independent legislative

changes, we propose to place the statutory definition directly into the award. If any party opposes this course, they may file a submission in that respect within 14 days of the date of this decision. [emphasis added]

22. We agree that the statutory definition should be placed directly into the Award.
23. The DS Act is currently under review by the Department of Social Services. It is likely that all references to “supported employment services” will be removed entirely from the DS Act, given that supported employment services are no longer funded by the Commonwealth and instead are funded through the NDIS (i.e., all former DSS-funded supported employment services are now registered NDIS providers).
24. To avoid any potential issue in the future, we submit that the statutory definition should be placed directly into the Award by amending clause 4.3 as follows:

4.3 *Supported employment services means services to support the paid employment of persons with disabilities, being persons:*

- (a) *for whom competitive employment at or above the relevant award wage is unlikely; and*
- (b) *who, because of their disabilities, need substantial ongoing support to obtain or retain paid employment.*

25. This is consistent with the provisional view expressed in the 2019 Decision.
26. This proposed amendment is reflected in the marked-up Draft Determination **attached** to this submission.

DRAFTING ISSUES IDENTIFIED IN THE DRAFT DETERMINATION

Additional modern awards

27. In the December 2019 decision, the Commission held at [373] that:

[373] The classification descriptors for the existing Grades 1-7 will be modified so that they are expressed in terms of generic indicators of work value. We consider

that the current lists of indicative tasks should be removed to make it clear that the mere performance of one of those tasks in circumstances in relation to job which has been established or tailored to align with a disabled employee's level of capacity is not sufficient or intended to fall within any of these grades. Instead, alignments with other award classifications which provide for the performance of work commonly performed in the ADE sector will be included to provide proper guidance as to the work intended to be comprehended at each classification level. Grades A-B and 1-7 will, taken together, provide a classification structure which accommodates in a comprehensive way the jobs which the evidence shows actually exist in the ADE sector and properly reflects their work value. [emphasis added]

28. The Draft Determination contains references to seven modern awards, namely:

- (a) Food, Beverage and Tobacco Manufacturing Award 2020;
- (b) Gardening and Landscaping Services Award 2020;
- (c) Manufacturing and Associated Industries and Occupations Award 2020;
- (d) Textile, Clothing, Footwear and Associated Industries Award 2020;
- (e) Dry Cleaning and Laundry Industry Award 2020;
- (f) Storage Services and Wholesale Award 2020; and
- (g) Waste Management Award 2020.

29. Although not a 'drafting' issue as such, consultation with employers following the November Decision has led to further feedback being received regarding the list of modern awards contained in the classification definitions for Grades 2 to 5. Specifically, employers have indicated that the classification definitions would benefit from the inclusion of four additional modern awards into the classification descriptors. Our clients respectfully request that the following four additional awards be included into the classification definitions:

- (a) Hospitality Industry (General Award) 2020;

- (b) Timber Industry Award 2020 (General Timber Stream);
 - (c) Cleaning Services Award 2020; and
 - (d) Horticulture Award 2020.
30. We are instructed that these awards contain classifications for work that is commonly performed in the ADE sector. It is also notable that the current classification structure in the Award contains references to the type of work that is typically regulated by the abovementioned awards. For example:
- (a) Schedule A.3.3(c) of the current Award refers to indicative tasks listed under the banner of 'Catering' which fall within the Hospitality Industry (General Award) 2020;
 - (b) Schedule A.3.3(f) of the current Award refers to indicative tasks listed under the banner of 'Timberwork' that align with the Timber Industry Award (general timber stream);
 - (c) Schedule A.3.3(l) of the current Award refers to indicative tasks listed under the banner of 'Horticulture and related activities' that align with the Horticulture Award;
 - (d) Schedule A.4.3(l) of the current Award refers to indicative tasks listed under the banner of 'Cleaning' that align with the Cleaning Services Award.
31. The inclusion of these awards into the classification structure will assist both employers and employees by providing further guidance as to the work intended to be comprehended at each classification level.
32. We acknowledge that it would have been desirable for this issue to have been raised at an earlier stage of these proceedings, and prior to this current round of submissions. However, this feedback has (in part) arisen only recently due to what appears to be some minor re-drafting of the classification descriptors between 2019 and now. Specifically, in the Draft Determination attached to the December 2019 decision, each of Grades 2 through to 5 contained the wording "This may include the performance of work included in the following awards classifications" immediately prior to the list of modern award classifications at each

Grade. However, the current Draft Determination only contains that wording at Grades 2 and 3. The wording at Grades 4 and 5 has changed to “Employees at this grade will perform work ... encompassed in any of the following award classifications”.

33. While our clients do not have any objection to the wording referred to above for Grades 4 and 5, to aid with the practical application of the new classification structure we submit that employers and employees will be assisted by having the four additional awards referred to above included in the new classification structure.
34. The **attached** marked-up Draft Determination sets out how we propose the relevant classification levels in these four awards be aligned to the Grades in the proposed new classification structure.

Drafting issues

Item 1

35. We seek an amendment to item 1 of the Draft Determination as referred to in paragraphs 19 -26 of this submission.

Item 2

36. There is a reference in clause 15.3(b) to the ‘2010’ modern award, which we have corrected to the “Supported Employment Services Award 2020”.

Items 2 and 13

37. Item 13 of the Draft Determination proposes to insert a new “Schedule I” into the Award which contains transitional arrangements to facilitate the move from the current Award wages structure to the proposed new wage structure. We wish to raise two matters relating to Schedule I:

- (a) *First*, the Draft Determination does not appear to include an ‘operative’ provision in the body of the Award which gives effect to Schedule I. This creates some uncertainty as to how Schedule I would operate, particularly having regard to

clauses 15.1 and 15.2 of the Draft Determination. To address this issue, we consider it necessary that a provision be inserted into clause 15.4 to clarify that Schedule I contains transitional arrangements relating to the implementation of the new wages structure. We have proposed some wording in the **attached** marked-up Draft Determination which can be seen in clause 15.4.

- (b) *Second*, Schedule I.2.2 imposes an obligation on employers to have employees “subject to an initial SWS wage assessment before 1 May 2026”. We note that this may not necessarily be wholly within the power of employers, given that they will be reliant on the Department of Social Services providing the assessors to undertake the assessments. This gives rise to a concern that employers might ultimately be found to be in breach of the Award if, for reasons outside their control and through no fault of their own, the Department does not facilitate an initial SWS assessment by the deadline. At this point, we do not seek any amendment to this aspect of the Draft Determination, but we wish to raise the issue and foreshadow that an application might need to be made in the future if it appears that certain SWS assessments may not be done by the relevant deadline. In that regard, our clients look forward to further details from the Department regarding the practical and logistical issues relating to how SWS assessments will occur and what steps employers should be taking to facilitate this process (noting that many ADEs have not previously had any experience with SWS assessments).

Item 6

38. As set out in paragraphs 27-34 of this submission, we seek the inclusion of references to a further four modern awards into the classification definitions for Grades 2-5.

Item 12

39. There is a cross-referencing error in Schedule D.5.6 of the Draft Determination.

Proposed amendments to Draft Determination

40. **Attached** to this submission is a marked-up version of the Draft Determination which sets out the amendments that our clients seek to the terms of the variations.

ORAL SUBMISSIONS

41. Our clients do not consider it necessary to make any further oral submissions in relation to the matters outlined in this submission and therefore do not specifically request that a hearing take place on 7 December 2022, unless of course the Full Bench has any questions in relation to these submissions or wishes to hear further from us.



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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** means services to support the paid employment of persons with disabilities, being persons:
- (a) for whom competitive employment at or above the relevant award wage is unlikely; and
 - (b) who, because of their disabilities, need substantial ongoing support to obtain or retain paid employment.

Deleted: 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 2020* and not the *Miscellaneous Award 2020*.

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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) Schedule I of this Award sets out the transitional arrangements that apply for employees who have not been the subject of a SWS assessment prior to 1 May 2023.

(c) **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.

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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:

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(i) consists of duties and a level of supervision which accommodate the 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*
- *Hospitality Industry (General Award) 2020: Level 1*
- *Timber Industry Award 2020: General Timber Stream Level 2*
- *Horticulture Award 2020: Level 2*

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

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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
- *Hospitality Industry (General Award) 2020*: Level 2
- *Timber Industry Award 2020*: General Timber Stream Level 3
- *Cleaning Services Award 2020*: Cleaning Services Employee Level 1
- *Horticulture Award 2020*: Level 3

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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
 - *Hospitality Industry (General Award) 2020*: Level 3
 - *Timber Industry Award 2020*: General Timber Stream Level 4
 - *Cleaning Services Award 2020*: Cleaning Services Employee Level 2
 - *Horticulture Award 2020*: Level 4

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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

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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
- *Hospitality Industry (General Award) 2020*: Level 4
- *Timber Industry Award 2020*: General Timber Stream Level 5
- *Cleaning Services Award 2020*: Cleaning Services Employee Level 3
- *Horticulture Award 2020*: Level 5

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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

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¹ Rates 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 ~~an~~ 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 Rates 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

¹ Rates 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

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	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.

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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 30—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

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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 2 years' 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.

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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 trialed.

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 provided that the 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.

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