

Good Practice Guide:

Grading employees under the
new Supported Employment
Services Award 2020



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1. Background

The Fair Work Commission has recently concluded its long-running review of the *Supported Employment Services Award* (the **Award**), which was undertaken as part of the 4 yearly review of modern awards required by section 156 of the *Fair Work Act 2009* (Cth).

The main issue considered during that review was the wage-setting methodology employees with a disability working in the supported employment services sector. The current version of the Award provides for seven classifications and minimum pay rates (Grades 1-7) for various types of work, but then also permits employees with a disability to be paid a percentage of the prescribed minimum rates based on an assessment undertaken using one of the approved wage assessment tools listed in the Award.

During the review process, the Fair Work Commission (the **FWC**) considered proposals to change the wage-setting methodology for employees with a disability (which included removing the wage assessment tools from the Award).

2. Outcome of the review: A new wages structure

On 21 December 2022, a Full Bench of the Fair Work Commission handed down its final decision in the long-running review of Award.¹ The outcome of that process is that the current wage-setting methodology for supported employees contained in the Award will be removed and replaced with a new wages structure.

The new wage-setting methodology for employees with a disability governed by the Award will comprise of two key components:

- Firstly, a grading process whereby employees must be classified into one of the Grades in the new classification structure; and
- Secondly, if required and agreed between employer and employee, a modified SWS assessment process which is to be undertaken by a qualified assessor from the National Panel of Assessors.

This new wages structure will replace the raft of other wage assessment tools which are currently permitted by the Award. Those wage assessment tools will be removed from the Award from 30 June 2023. There are also a range of other changes and some complex transitional / phasing-in arrangements that will need to be considered.

The Determination which accompanies the decision sets out the specific variations that will be made to the Award.² The variations come into effect on 30 June 2023.

Please note that the *Supported Employment Services Award 2020* is a legally binding and enforceable industrial instrument made under the *Fair Work Act 2009* (Cth). Employers have a statutory obligation to comply with the terms of an applicable modern award. Contravening a term of a modern award is unlawful and exposes employers to civil penalties of up to \$82,500 per breach.³

1 See [\[2022\] FWCFB 245](#)

2 See [PR749151](#)

3 See section 45 Fair Work Act 2009 (Cth)

3. Purpose of this Guidance Note

This Guidance Note focuses on the first element of the new wages structure: the requirement for employers to classify / grade employees into one of the Grades in the new classification structure.

This Guidance Note does not deal with the other element of the wages structure (the SWS assessment process) or the other changes to the Award. For a detailed summary of the FWC decision and those other upcoming changes to the Award, please [click here](#).

4. The grading process

Employers need to classify or grade employees into the applicable Grade within the new classification structure by **no later than 30 June 2023**.

Importantly, this obligation is not limited to supported employees; it extends to all employees governed by the Award.⁴ Where an employer fails to grade an employee into the new classification structure by 30 June 2023, this will constitute a breach of the Award and will expose the employer to prosecution and civil penalties of up to \$82,500 per breach.

The new classification structure will be markedly different to the structure currently contained within the Award. The main changes to the classification structure include:

- The introduction of two new Grades (Grades A and B) into the classification structure which sit below the existing Grades 1-7.
- The amendment to the classification definitions within the existing Grades 1-7, including the removal of many of the indicative duties but with the inclusion of references to work in other award classifications as guides.

The consequence of these changes is that employers will need to re-assess (re-classify) the Grades of each existing employee to determine whether their current classification is correct, or whether they should instead be re-classified into a different Grade.

Each employee must be classified into one of the Grades in the new classification structure “having regard to the employee’s skills, experience and qualifications and the nature of the position in which the employee is employed”.

Like most classification structures across the modern awards system, the new classification structure sets out a series of Grades which reflect different (and progressively increased) levels of competencies which are broadly aligned to the Australian Qualifications Framework.

A complete copy of the new classification structure is set out in **Attachment A**.

⁴ This obligation will be contained in clause 15.1 of the Award.

5. Some Observations On The Classification Structure

Before considering the classification structure in detail, it is important to note that the classification structure contains various terms that are not specifically defined in the Award: for example, “sequential steps”, “sub-tasks”, “constant monitoring”, “regular monitoring”, etc. Accordingly, these terms must be interpreted in accordance with the well-established principles of award interpretation that have been developed through case law over the years.

Those principles confirm that the task of interpreting the Award is to “discern the objective meaning of the words used bearing in mind the context in which they appear and the purpose they are intended to serve”. This means that it may be necessary to consider the following factors:

- The ordinary general meaning of the words used in the Award (e.g. dictionary definitions of terms).
- The context of the words in the instrument as a whole.
- The context in which an instrument was created and its intended purpose.
- The facts known at the time the instrument is drafted.
- The history of the award.

Given that terms like “sequential steps” and “constant monitoring” are not defined in the Award, the ordinary general meaning of those words should be applied unless the context or purpose weighs against that approach.

To assist in the grading exercise, we have developed a Glossary / Explanation of the key terms used in the new wages structure which is set out in Attachment B.

There are, however, two key elements which are fundamental to properly navigating the classification structure and distinguishing between the various Grades. These are task complexity and supervision levels.

Complexity of task

Task complexity is a key element of the classification structure, with task complexity progressing as follows:

- “Simple tasks” (Grades A and B)
- “Basic tasks” (Grade 2)
- “More complex tasks” (Grade 3)
- AQF / trade certification (Grade 4 and above).

The terms “simple”, “basic” and “more complex” are not defined in the Award. Their ordinary general meaning should be adopted.

A “simple task” is a task that is uncomplicated; easy to understand; not elaborate.

The term “basic” is a synonym of “simple” and means uncomplicated; rudimentary; foundational; fundamental.

The term “more complex” naturally introduces a level of complexity such that the task can no longer be described as simple or basic.

You should also have regard to the indicative award classification levels set out in Grades

2 and 3 to assist in distinguishing between tasks that are “basic” and “more complex” (for example, see the reference to Level 1 of the Hospitality Industry (General) Award for Grade 2, compared with the reference to Level 2 of the Hospitality Industry (General) Award for Grade 3).

Supervision levels

The classification structure also refers to three different levels of supervision – which apply progressively as follows:

- “Direct supervision” (Grades A – 2)
- “Routine supervision” (Grade 3)
- “General supervision” (Grade 4).

These terms are also not defined in the Award, although are a common feature of many modern award classification structures.

The word “supervision” means the act of watching a person or activity and making certain that everything is done correctly, safely, etc.

The term “direct supervision” suggests that a supervisor is physically present, or within close proximity, most or all of the time, and available to monitor the performance of work and assist with effective work output. For example, direct supervision means the employee receives regular guidance, support and direction from a supervisor, who monitors the work performance and is accountable for effective work output.

The term “routine supervision” suggests a level of supervision that is not constant, but instead periodic or intermittent. For example, the supervisor checks-in more frequently to ensure work is continuing and to undertake a quality-control check.

Lastly, the term “general supervision” suggests there must be some level of supervision. In other words, the employee is capable of working independently, but the supervisor might check in less frequently as part of their general walk-through of the site.

You should keep these concepts front of mind as you undertake the grading exercise.

We turn now to the specific elements of the classification structure.

6. New grades A and B: the rationale for these new grades

One of the most significant elements of the new Award structure is the introduction of two new Grades (Grades A and B) into the classification structure alongside the other existing Grades 1-7.⁵

There are some specific threshold or ‘gateway’ requirements in relation to Grades A and B, which will be set out in the new classification structure, and which are addressed below. However, before turning to the specific ‘gateway’ requirements, it is important to understand the context and rationale for the introduction of these two new Grades.

⁵ Grades A and B sit at the start of the classification structure, such that the Grades progress in the following way: Grade A, Grade B, Grade 1, Grade 2, Grade 3, Grade 4, Grade 5, Grade 6, Grade 7.

In one of the earlier FWC decisions, the Full Bench made a range of observations which led to their decision to introduce the new Grades A and B. These included that:

- The nature of employment is markedly different in the supported employment sector than in the general labour market.
- The normal state of affairs is that employers will establish a job for the purpose of the performance of certain work functions which it requires to be performed in order to carry on its business. It will then hire a person whom it considers capable of performing those functions to the required standard to fill that job. Where the job is one that falls within the coverage of one of the Commission's modern awards, the prescribed minimum rate of pay for that job will be determined by matching the duties and responsibilities of that job to one of the pay classifications in the award. The operating assumption when the Commission makes or varies its awards is that this normal state of affairs applies.
- ADEs operate in a different paradigm. The purpose of their existence is to provide employment opportunities for people with a disability who have restricted work capacity, typically on a not-for-profit basis. Accordingly, they seek only those business opportunities which will generate jobs capable of being filled by people with a disability, which necessarily limits the types of commercial activity they can engage in.
- Further, they do not arrange their workforces simply on the basis of a job structure that will allow the necessary work to be performed in the most productive and efficient fashion, and then recruit persons to fill those jobs. Rather, they create or tailor jobs 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. This may mean, for example, that 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.
- 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 person with a disability's restricted work capacity 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 person without a disability is capable of performing, notwithstanding that the duties performed by the person with a disability may constitute part of those that might be performed by the person without a disability.⁶

After making those observations, the FWC then expressed the provisional view that there should be two new classifications (Grades A and B) below the current Grade 1 in the Award which "should be applicable only where the employer has created a position consisting of tasks and a level of supervision that has been tailored or adjusted to meet the circumstances of the employee's disability and which does not fall into Grades 1-7 of the classification structure".⁷

The FWC clarified that Grades A and B are not intended to cover a situation where an employer "simply makes a reasonable adjustment to allow a disabled person to perform a pre-existing vacant position".⁸

6 [2019] FWCFB 8179 at [247]-[248].

7 [2019] FWCFB 8179 at [372].

8 [2019] FWCFB 8179 at [372].

While there was some evolution (and drafting amendment) between the time of the FWC making those observations and the final decision being handed down, the general intention and rationale behind Grades A and B has not changed.

We turn now to the specific ‘gateway’ requirements which will be set out in the new classification structure which will sit at Schedule A to the Award.

7. The ‘Gateway’ requirements

Grades A and B apply to an employee with a disability who:

- 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
- has been placed in a position by their employer which:
 - consists of duties and a level of supervision and monitoring which accommodate the effects of the employee’s disability; and
 - does not fall into Grades 1-7.

Where the ‘gateway’ requirements are satisfied, the employee should be classified into either Grade A or Grade B. Where the ‘gateway’ requirements are not satisfied, the employee must be classified into one of the Grades 1-7.

8. Applying the ‘Gateway’ requirements

As can be seen from the above, there are five elements that must be established in order to pass through the ‘gateway’ and to classify an employee into Grade A or B.

- **First, the employee must have a disability.**

This element should be uncontroversial and easily determined. The phrase “employee with a disability” is defined in clause 2 of the Award as meaning “a national system employee who qualifies for a disability support pension as set out in sections 94 or 95 of the Social Security Act 1991 (Cth), or who would be so qualified but for paragraph 94(1)(e) or paragraph 95(1)(c) of that Act”.

This defined term should be applied in determining whether the employee has a disability for the purpose of applying the gateway requirements.

- **Second, the employee must 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.**

This element requires the employer to make an assessment as to the employee’s capacity to undertake certain work. The term ‘capacity’ is used in the general sense; it is not a reference to a person’s legal capacity or medical capacity.

Importantly, this element does not focus on the work or duties **actually** performed by the employee. Rather, you will need to consider the person’s capability to do certain work (regardless of the work they actually perform), which requires you to consider the work the

employee is **able to perform**.⁹ Therefore, this element will not be met merely because the tasks allocated to the person are very basic; it is about their capacity. For example, if an employee is capable of performing a Grade 4 position but is allocated Grade A work, this would not satisfy this element of the 'gateway' requirements.

This will require identifying the employee's capacity to undertake duties or exercise skill and responsibility, and then comparing that capacity against the classification definitions / descriptors in Grades 1-7 to determine whether or not the person has the requisite capacity. This will involve a consideration of both the introductory blurb in each of the Grades 1-7 as well as the various 'indicative' reference classifications from other awards.¹⁰

Where the employee is capable of undertaking duties or exercising the level of skill and responsibility of any position in Grades 1-7, the 'gateway' requirements will not be met, and the employee must be classified into Grades 1-7.

- **Third, the employee's lack of capacity to undertake a position to which Grades 1-7 apply must be due to (or 'because of') their disability.**

This introduces an element of causation and makes it clear that an employee's lack of capacity to perform the duties of a position falling within Grades 1-7 must be because of the person's disability. This means that if the employee's lack of capacity is due to some other reason (unrelated to their disability), this element would not be satisfied. In most cases, this element should be uncontroversial.

- **Fourth, the employee must have been placed in a position which consists of duties and a level of supervision and monitoring which accommodate the effects of the employee's disability.**

This element contemplates modification to duties and supervision to accommodate the employee, having regard to their disability. There are two aspects that must be met.

First, there must be a level of modification or tailoring of the duties performed by the employee. This might involve a typical job being disaggregated or broken down into discrete tasks, and the employee then being allocated tasks that are within their capability, rather than being expected to do the whole 'job'. In other words, the position held by the employee is not a role that would typically be advertised in the open labour market or exist in open employment.

Second, there must be a level of supervision and monitoring which accommodates the employee, having regard to their disability. This suggests a greater level of supervision and monitoring than would typically occur in open employment, or for employees who do not have a disability. It also suggests that the level of supervision and monitoring is adjusted or adapted to the individual's need.

Where an employer customises duties for an employee based around their capacity (i.e. their work capacity effectively dictates the duties given to them), this element will likely be met. However, if the role performed by the employee resembles a job that you would see in open

⁹ This approach is different to the usual principles for award classification, where the focus is on the work actually performed by the employee and the 'principal purpose' for their employment (see case law authorities such as *Carpenter v Corona Manufacturing Pty Ltd*, (2002) 122 IR 387; *R Brand v APIR Systems Limited* (Giudice J, Marsh SDP, Thatcher C, 16 September 2003) [PR938031].

¹⁰ Grades 2-5 of the new classification structure each contain a non-exhaustive list of classifications from other awards which are effectively indicative duties for each of those Grades.

employment, and the person does not require any greater level of supervision or monitoring than a non-disabled employee, this element will not be met.

- **Fifth, that position must not fall into Grades 1-7.**

Where the employee's position or role falls into one of the Grades at 1-7, the employee must be classified into that Grade and cannot be classified into Grade A or B. This is a logical proposition.

However, there is an important qualification to this rule. The FWC clarified in one of its earlier decisions that "... the mere performance of one of the indicative tasks listed or referred to in Grades 1-7, in circumstances where the employee's job has been established or tailored to align with their level of capacity, is not sufficient or intended to result in the employee falling within any of the Grades 1-7."¹¹

The Award will also contain a clause stating: "An employee in any of the Grades 1-7 may (subject to any necessary training) be required to perform any or all of the duties in the classification descriptors".

This means that employees will not necessarily be classified into Grade 1-7 simply because they are capable of performing one or more discrete tasks that fall within the scope of Grades 1-7. Rather, it is contemplated that (and employers should be able to expect that) an employee classified into Grade 1-7 should have the capacity to perform the full range of duties that fall within that Grade (with the appropriate level of training).

Where employees are capable of doing some but not all of the duties in Grade 2 (for example), the Award contemplates that they be classified into Grade A or B. Some examples of this might include:

- An employee who works as part of a gardening crew and is able to collect leaves and place them in a bag, but is not able to use a lawnmower, trimmer/edger, or leaf blower.
- An employee in a café setting whose capacity is confined to collecting food plates and glasses (but is not able to clean tables or provide any other assistance).
- An employee in a packing facility who is able to undertake very basic packing tasks but cannot exercise discretion, prepare documentation, or liaise with suppliers.
- An employee in a manufacturing facility who performs basic labouring tasks but cannot exercise judgement, understand basic quality control procedures, identify quality deviations / faults, or identify / report workplace hazards.

In these types of cases where employees are capable of performing some but not all of the duties in Grade 2 (for example), the employer will need to closely examine the classification descriptors and make an objective, evaluative judgement. This should be done in a sensible, pragmatic fashion. Overly literal or technical interpretations should be avoided. For example, if an employee is capable of undertaking the vast majority of duties in Grade 2 but struggles with one or two discrete items (or is not able to do a task that is mentioned in the classification descriptors, but which is not relevant or applicable to their workplace), it may be appropriate or necessary to classify them into Grades 1-7 rather than A or B. Of course, it would be prudent for employers to adopt a conservative approach and 'round up' in situations where identifying the applicable classification is challenging.

¹¹ [2019] FWCFB 8179 at [373].

Where each of the elements of the 'gateway' requirements are satisfied in relation to a particular employee, the employer should classify the employee into Grade A or Grade B.

9. Grades A and B

Where each of the elements of the 'gateway' requirements are satisfied in relation to a particular employee, the employer should classify the employee into Grade A or Grade B.

When one considers Grades A and B, it is apparent that those Grades contain reasonably broad 'descriptors' based around a few key issues: task complexity, use of equipment, and levels of supervision / monitoring.

Grades A and B both refer to "a simple task or tasks" being performed under "direct supervision". These elements are consistent across both the Grades, and so provide limited assistance in determining whether an employee should fall into Grade A or B. Of course, if the employee is performing 'non-simple' tasks or is not working under direct supervision, you should revisit the 'gateway' requirements and the other classification descriptors. Employees who perform 'non-simple' tasks or who do not work under direct supervision must be classified into Grades 1-7.

Where the "simple task" and "direct supervision" labels apply to the employee, you should then examine the following three key points of differentiation between Grades A and B.

- Do they perform simple task/s consisting of up to three sequential steps or sub-tasks, or task/s consisting of more than three sequential steps or sub-tasks?
- Do they use tools with basic functionality, or do they use mechanical or electric equipment or tools?
- Do they require constant monitoring or only regular monitoring?

These points will be critical in determining which Grade an employee should be classified into.

Sequential steps or sub-tasks

Grades A and B apply to employees performing one or more "simple tasks". It is therefore necessary to identify the specific tasks undertaken by each employee (to confirm the tasks are in fact simple). While it is unnecessary to exhaustively identify every task performed by an employee, you should identify the main or major tasks undertaken by the employee (i.e. those tasks the employee primarily, usually, or commonly performs).

A "task" is different to a person's "job" or "position". The term "task" is synonymous with "duty" or "duties": a task that one is required to perform as part of one's job. Employees will usually be required to undertake numerous tasks as part of their job.

Once the main tasks performed by the employee have been identified, the next step is to identify how many "sequential steps" or "sub-tasks" are involved in each of those tasks.

Again, these terms are not defined in the Award. The phrases "sequential steps" and "sub-tasks" are used interchangeably, and it appears both phrases have been included to assist with interpreting and applying the classification structure rather than the phrases being intended to mean different things.

The word "sequential" means 'following' or 'successive' and is suggestive of certain steps

being taken in a particular order. However, the inclusion of the phrase “sub-tasks” avoids the need for steps or sub-tasks to be undertaken in a sequential manner. The real issue is what would be considered a “step” or “sub-task” for the purposes of applying Grades A and B.

A sensible and pragmatic approach should be taken to identifying the number of sequential steps or sub-tasks involved in a particular task. For example, the task of assembling a particular product might involve the following sub-tasks: folding a flat pack into a cardboard box, inserting components into the box, sealing the box, weighing the box, and placing a sticker on the box.

Another example might be an employee performing the task of cleaning a factory floor. That task might involve the following sequential steps or sub-tasks: clearing the area of items/obstacles, sweeping the floor, and then collecting the dust with a dustpan and placing the rubbish in the bin.

It is not intended that a narrow or technical interpretation be adopted in relation to characterising sequential steps or sub-tasks. Take the example of an employee who is required to fold a cardboard box in the course of assembling and packing a product. The act of folding the cardboard box is most likely a sub-task of the assembly/packing task. It is not intended that the sub-task of folding a cardboard box be broken down into granular series of sub-tasks like picking up the flat pack cardboard, placing the item on the table, folding each of the four sides, etc.

Very simple tasks (such as picking and packing items) are not intended to be broken down in such a granular way that it constitutes 10 or more sub-tasks.¹²

Use of tools / Equipment

The second distinguishing feature between Grades A and B are references to the use of tools and/or equipment.

Grade A refers to the performance of simple tasks that “may” involve the use of “jigs or equipment or tools with basic functionality”.

Grade B refers to the performance of simple tasks that “may” involve the use of “mechanical or electric equipment or tools”.

The word “may” indicates that the references to the use of certain tools and equipment are not intended to be a pre-requisite for classification into the Grade, and will not be determinative to falling into a particular Grade. Rather, the wording is intended to assist employees in drawing the (sometimes fine) distinction between Grades A and B. It is a ‘best fit’ or ‘most appropriate’ test rather than being intended to be applied in an overly technical fashion.

The reference in Grade B to tools and equipment suggests some higher order work task, potentially involving the utilisation of mechanical or electrical equipment in distinction to purely manual activity. The focus should be on whether the employee is required to be actively operating the mechanical or electrical equipment or tool themselves, rather than situations where the employee is performing a task that supports the use (by another employee) of the mechanical or electrical equipment or tool.

¹² The FWC initially proposed the phrase “sequential actions”: see [\[2019\] FWCFB 8179](#) at [372]. However, the phrase “sequential steps” was then adopted following a [submission](#) by ABLA, which was intended to avoid a narrow / granular approach to the ascertainment of sequential steps or sub-tasks: see [\[2020\] FWCFB 1704](#).

There might also be situations where an employee uses a piece of mechanical or electrical equipment which has been subject to significant modification or restriction by the employer to enable an employee to use the machinery (i.e. the employee does not use the equipment in the same manner as an employee without a disability). In these scenarios, the functionality of the equipment as used by the employee should be considered, and where the equipment has been modified such that it only provides basic functionality, the descriptor at Grade A might be more relevant even though the equipment might be of a mechanical or electric nature.

Level of monitoring

Grades A and B both refer to employees working under direct supervision; however, they contemplate different levels of monitoring. Grade A contemplates “constant” monitoring, whereas Grade B contemplates “regular” monitoring.

The concepts of supervision and monitoring are very similar. However, supervision is a broader phrase which implies a greater level of interaction or involvement with employees and supervisory responsibility or accountability. For example, supervision might encompass providing information, giving feedback, demonstrating a task, etc.

“Monitoring” involves physical observation without necessarily giving instruction or actively assisting with the task. The term “constant” means ‘happening a lot or all the time’; continuous. This can be contrasted with the term “regular” which means ‘happening or doing something often’ and suggests a periodic but not continuous level of monitoring.

Clearly, where a supervisor is physically present in close proximity and physically observing the performance of work by one or a small group of employees, that would amount to constant monitoring. However, where a ‘roving’ supervisor remains in close proximity but is tasked with monitoring or supervising different groups of workers in different workstations within a factory setting, that might amount to regular monitoring rather than constant monitoring. Again, this might be a fine distinction in some cases and will require an objective, evaluative judgment.

What happens when the number of sequential steps / sub-tasks conflicts with the level of monitoring or tools?

There will be some cases where, for individual employees, there will be a conflict between:

- The number of sequential steps involved in the tasks undertaken by them;
- The level of monitoring required; and
- The tools or equipment used by them.

For example, there might be an employee who only undertakes simple tasks involving one or two sub-tasks but who only requires regular supervision (not constant). Equally, there might be another employee who undertakes simple tasks involving more than three sub-tasks but requires constant monitoring.

As stated above, classification structures are not intended to be applied in a technical, forensic way. You should select the ‘most appropriate’ classification or ‘best fit’.

Of course, where an employee does not fit neatly into one Grade but instead straddles across two Grades, it might be prudent to ‘round-up’ and classify the employee into the higher or more favourable Grade.

10. Grades 1-7

For employees who do not satisfy the 'gateway' requirements or do not otherwise fall into Grades A or B, they must be classified into Grades 1-7.

The Award will specify that "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". As stated above, an employee classified into Grades 1-7 "may (subject to any necessary training) be required to perform any or all of the duties in the classification descriptors".

The task of classifying an employee into one of the Grades between 1-7 should be a fairly conventional exercise, not dissimilar to how employers in other industries covered by other modern awards classify employees.

The employee must be classified into one of the Grades having regard to their "skills, experience and qualifications and the nature of the position" in which they are employed.

The classification definitions / descriptors of each Grade will be critical. Employers will need to closely examine those and determine which Grade is the most appropriate for the employee. This should be an objective assessment and the most appropriate or best fit Grade should be selected.

Grade 1 is an entry-level or transitional grade that applies to employees undertaking an induction or on the job training to enable them to perform work falling within Grade 2 or above. Employees in Grade 1 will almost always be new entrants to the workforce and/or new employees with no prior experience in the sector. Employees cannot remain on Grade 1 for more than 3 months; at which time they should be progressed up to Grade 2 or above based on the work performed by them.

Please note that there are some differences in the drafting of the new Grades 1 and 2 classification descriptors compared to what is contained in the current version of the Award. Under the current version of the Award, it is possible for employees to remain on Grade 1 on the basis that the employee could not complete the required 3 months' structured training for that Grade. However, under the new classification structure, a 3 month time period is clearly specified in Grade 1, meaning that employees cannot remain on Grade 1 for more than 3 months; at which time they should be progressed up to Grade 2 or above based on the work performed by them.

Grades 2-7 are permanent grades (i.e. employees are capable of remaining on one of those Grades for an indefinite time period). Each of the grades progressively increase in task complexity and level of autonomy and build on the descriptors contained in previous grades.

Notably, Grades 2-5 contain indicative reference award classification levels to assist employers in properly classifying employees. The list of reference awards is indicative only; they are not intended to be exhaustive lists. Employers might have employees who perform work referred to in another modern award not referenced in the classification structure. There is no issue with this. You simply need to have regard to the introductory wording in each of the grades to determine the appropriate Grade.

Where the employee performs work referable to a modern award listed in one of the reference awards (such as gardening, manufacturing or hospitality work), you should refer to the levels in

that modern award to gauge where they should fall within the classification structure.

For example, an employee who performs gardening work of a kind (or value) that would otherwise fall within Level 1 of the Gardening and Landscaping Services Award, the intention is that they should be classified in Grade 2 of the Supported Employment Services Award.

How do we deal with employees whose duties/tasks vary?

Where an employee's work activities are highly variable or seasonal, the usual approach for award classification is to ascertain the 'principal purpose' for which the employee was employed.

The Fair Work Commission endorsed this approach in one of their decisions, stating:

"[This] difficulty is not unique to the circumstances of supported employees and may arise from time to time in respect of any classification definitions which describe duties, skills and responsibilities in generic terms. Such difficulties are usually resolved by the application of the principal purpose test enunciated in decisions such as *Carpenter v Corona Manufacturing Pty Ltd*. The principal purpose test goes beyond a mere quantitative assessment of the time spent in carrying out various duties and requires an examination to be made of the nature of the work and the circumstances in which the employee is employed to do the work, with a view to ascertaining the principal purpose for which the employee is employed... Short term changes in duties may be accommodated by the existing higher duties provision in clause 15.4 of the SES Award."¹³

Although the 'principal purpose' test is the appropriate test for classifying employees whose duties vary, given the nature of the supported employment sector, you might elect to focus on the employee's capacity and capabilities rather than merely looking at the work they actually perform, or the purpose for which they were employed. This is particularly the case where the purpose of an employee's employment is to provide them with meaningful work opportunities to allow them to develop their skills.

For example, you might have an employee who is capable of performing more complex tasks under routine supervision (i.e. Grade 3 work), but due to circumstances such as the work orders available or the particular season, the enterprise might only have Grade 2 work available for the employee to perform. In this scenario, it would most likely be appropriate to classify this employee into Grade 3 unless there are compelling offsetting reasons (e.g. the employee was employed to perform a very specific set of tasks).

11. Record keeping obligations

Although the Award will not contain an explicit requirement for employers to keep a written record of which Grade each employee has been classified into, this is obviously an important governance measure and should be done. Employers will need these records for payroll purposes and to deal with any enquiry about an employee's terms and conditions or dispute regarding compliance with the Award.

¹³ See [2022] FWCFB 203 at [235].

Equally, there is no explicit obligation in the Award for employers to advise employees of their Grade. However, the 'Rights at work for supported employees' clause of the Award requires employers to "take all reasonable steps to provide such employees with the information they require to exercise their employment rights". This will obviously encompass giving supported employees information about their Grade. Such information is also necessary for employees to exercise their right to request a review of their Grade, which is addressed below.

12. Employee right of review / dispute resolution process

The Award currently contains two clauses about dealing with disputes.

The 'Dispute resolution' clause of the Award sets out procedures to be followed when a dispute arises about a matter under the Award or the NES.

The 'Rights at work for supported employees' clause also contains additional rights and protections for supported employees. From 30 June 2023, the existing clause will be varied to include a mechanism for supported employees to request a review of the Grade into which they have been classified by their employer.

Where an employee requests a review of their Grade, the employer will be required to:

- Meet with the employee as soon as reasonably practicable to discuss the issue;
- Review the grading outcome and provide a written response within 21 days outlining its decision in relation to the employee's review request (along with reasons), and
- Where the employee remains unsatisfied with the response, the employee may utilise the procedures under the 'Dispute resolution' clause.

Attachment A: New classification structure

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 and monitoring which accommodate the effects 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
- Horticulture Award 2020: Level 2

- Hospitality Industry (General 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
- Timber Industry Award 2020: General Timber Stream Level 2; Wood and Timber Furniture Stream 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 supervision. This may include the performance of work included in the following awards classifications:

- Cleaning Services Award 2020: Cleaning Services Employee Level 1
- 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
- Horticulture Award 2020: Level 3
- Hospitality Industry (General 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
- Timber Industry Award 2020: General Timber Stream Level 3; Wood and Timber Furniture Stream Level 3
- 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:
 - Cleaning Services Award 2020: Cleaning Services Employee Level 2
 - 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
 - Horticulture Award 2020: Level 4

- Hospitality Industry (General 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
- Timber Industry Award 2020: General Timber Stream Level 4; Wood and Timber Furniture Stream Level 4
- Waste Management Award 2020: Level 3

A.2.7 Grade 5

Employees at this grade will perform work:

- 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
- encompassed in any of the following award classifications:
 - Cleaning Services Award 2020: Cleaning Services Employee Level 3
 - 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
 - Horticulture Award 2020: Level 5
 - Hospitality Industry (General 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
 - Timber Industry Award 2020: General Timber Stream Level 4; Wood and Timber Furniture Stream Level 5
 - 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.

Attachment B: Glossary of key terms

Term	Meaning / Explanation
Employee with a disability	A national system employee who qualifies for a disability support pension as set out in sections 94 or 95 of the Social Security Act 1991 (Cth), or who would be so qualified but for paragraph 94(1)l or paragraph 95(1)(c) of that Act.
Job	Work that a person does to earn money.
Position / Role	A rank or level in a company / organisation; the position or purpose that someone has in an organisation.
Duties	Something that you have to do because it is part of your job.
Task	A piece of work to be done; a task or action that one is required to perform as part of one's job; a definite or specific piece of work assigned to, falling to, or expected of a person.
Simple	Uncomplicated; easy to understand; not elaborate.
Basic	Uncomplicated; rudimentary; foundational; fundamental.
Complex	Having many parts related to each other in ways that may be difficult to understand; involving a lot of different but related parts.
Sequential step	A step or stage in a process, following a particular order.
Sub-task	A discrete step that forms part of a task; a discrete element of a task.
Supervision	The act of watching a person or activity and making certain that everything is done correctly, safely, according to the rules; the act of managing a department.
Direct	A closeness of a connection between two things.
Direct supervision	This phrase is suggestive of a supervisor being physically present, or within close proximity, most or all of the time, and available to monitor the performance of work, give instructions, and take responsibility for the performance of work.
Routine	The usual series of things that you do at a particular time; the practice of regularly doing things in a fixed order.
Routine supervision	This phrase suggests a level of supervision that is periodic or intermittent.
General supervision	This phrase suggests there must be some level of supervision, but is of a broad nature and does not require regular or periodic oversight (i.e. the employee is able to work autonomously for periods of time).

Monitoring	Physical observation (watching or noticing particular things) without necessarily giving instruction or actively assisting with the task; checking on development or progress.
Constant	Happening a lot or all the time; continuous.
Regular	Happening or doing something often.

Attachment C: Step by step guide to grading employees

Section 1: The Gateway Requirements

Question 1: Is the employee a person with a disability?

If **yes**, proceed to the **next question**.

If **no**, the employee does not meet the 'gateway requirements' for Grades A and B. Move directly to **Section 3**.

Question 2: Does the employee have the capacity to undertake the duties and exercise the level of skill and responsibility specified in the classification descriptors set out in Grades 1-7?

Note: The mere performance of one of the indicative tasks listed or referred to in Grades 1-7, in circumstances where the employee's job has been established or tailored to align with their level of capacity, is not sufficient or intended to result in the employee falling within any of the Grades 1-7.

If **yes**, the employee does not meet the 'gateway requirements' for Grades A and B. Move directly to **Section 3**.

If **no**, move to **Question 3**.

Question 3: Is the employee's lack of capacity to undertake the duties and exercise the level of skill and responsibility specified in the classification descriptors set out in Grades 1-7 due to, or because of, their disability?

If **yes**, move to **Question 4**.

If **no**, the employee does not meet the 'gateway requirements' for Grades A and B. Move directly to **Section 3**.

Question 4: Has the employer placed the employee in a position which consists of duties and a level of supervision and monitoring which accommodate the effects of their disability?

If **yes**, move to **Question 5**.

If **no**, the employee does not meet the 'gateway requirements' for Grades A and B. Move directly to **Section 3**.

Question 5: Does the employee's position fall into Grades 1-7 of the Classification Structure?

Note: An employee in Grades 1-7 may (subject to any necessary training) be required to perform any or all of the duties in the classification descriptors. The mere performance of one of the indicative tasks listed or referred to in Grades 1-7, in circumstances where the employee's job has been established or tailored to align with their level of capacity, is not sufficient or intended to result in the employee falling within any of the Grades 1-7.

If **yes**, the employee does not meet the 'gateway requirements' for Grades A and B. Move directly to **Section 3**.

If **no**, move to **Question 6**.

Section 2: Grades A and B

Question 6: Does the employee perform simple tasks?

If **yes**, move to **Question 7**.

If **no**, the employee cannot fall into Grades A or B and instead must be classified into Grades 1-7. Move directly to **Section 3**.

Question 7: Does the employee work under direct supervision?

If **yes**, move to **Question 8**.

If **no**, the employee cannot fall into Grades A or B, and instead must be classified into Grades 1-7. Move directly to **Section 3**.

Question 8: Does the employee perform a simple task or tasks consisting of 3 or more sequential steps or sub-tasks?

If **yes**, the employee should be graded into **Grade B**.

If **no**, move to **Question 9**.

Question 9: Does the employee use mechanical or electric equipment or tools in the performance of their tasks or sub-tasks?

If **yes**, the employee should be graded into **Grade B**.

If **no**, move to **Question 10**.

Question 10: Does the employee require constant monitoring?

If **yes**, the employee should be classified in **Grade A**.

If **no**, the employee is to be classified in **Grade B**.

Section 3: Grades 1-7

Consider each of the classification definitions in Grades 1-7 and select the Grade that is most appropriate for the employee.

Attachment D: Template grading form

Site name			
Employee name		Employee ID	
Role		DOB	

Notes:

1. You should use this form in conjunction with the Step-By-Step Guide to Grading Employees.
2. You should assess the employee on the work they principally perform in their job. Where an employee undertakes multiple tasks, you should assess the complexity of each task.
3. Where the task is 'simple', you must identify the number of sequential steps or sub-tasks involved in the task. You must also record the sequential steps or sub-tasks in the form.
4. Where the task is not simple, there is no need to identify the number of sequential steps or sub-tasks involved in the task.

Task 1									
Description of task									
Task complexity			Number of sequential steps or sub-tasks		Level of supervision			Level of monitoring	
Simple	Basic	Complex	3 or <	> 3	Direct	Routine	General	Constant	Regular
Sub-tasks		Sub-task description							
1									
2									
3									
4									
5									

Task 2									
Description of task									
Task complexity			Number of sequential steps or sub-tasks		Level of supervision			Level of monitoring	
Simple	Basic	Complex	3 or <	> 3	Direct	Routine	General	Constant	Regular
Sub-tasks		Sub-task description							
1									
2									
3									
4									
5									

Task 3									
Description of task									
Task complexity			Number of sequential steps or sub-tasks		Level of supervision			Level of monitoring	
Simple	Basic	Complex	3 or <	> 3	Direct	Routine	General	Constant	Regular
Sub-tasks		Sub-task description							
1									
2									
3									
4									
5									

Evidence available to support grading	Yes	No
Progress Notes		
Work Instructions / Safe Work Practices		

Name	Role	Signature	Date
	Employee		
	Parent/Carer/Support Person		
	Employment Coach		
	Site Manager		

Name			
Role			
Signature		Date	

Contact

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