

Workplace Relations Circular

For the information of members of Australian Business Industrial

CIRCULAR No.	CASE FILE No.	CIRCULAR DATE	IMPORTANT INFORMATION
2023/003	MA000103	09/01/2023	

4 YEARLY REVIEW OF MODERN AWARDS – VARIATIONS TO THE SUPPORTED EMPLOYMENT SERVICES AWARD 2020

On 21 December 2022, the Fair Work Commission (**Commission**) issued a final determination to give effect to its final Decision in the long-running review of the *Supported Employment Services Award 2020 (SES Award)*.

Following an extensive conciliation and arbitration process throughout 2018-2022, the Commission has now decided to introduce a new classification and wages structure that will apply to supported employees working in social enterprises (formerly known as Australian Disability Enterprises).

What are the changes to the Award?

Key Changes

- The introduction of a new classification structure which includes two new Grades (to be labelled Grade A and Grade B) which will sit below the existing Grades 1-7.
- The two new Grades A and B will be applicable for employees with a disability who:
 - do 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
 - 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.
- Amendment to the classification descriptors for Grades 1-7 (including references to indicative work/levels under other awards).
- The removal of all existing wage assessment tools from the Award, save for the Supported Wage System (SWS).
- The introduction of a new wage-setting methodology for employees with a disability comprising two key components:
 - Firstly, a grading process whereby employees are classified into one of the Grades (A through to 7); and
 - Secondly, an SWS assessment undertaken by a Department of Social Services (DSS) assessor.
- The combined effect of the above is that employees will then be entitled to be paid the relevant productivity percentage of the applicable minimum wage for their Grade.
- Minimum rates for Grades A and B will be \$7 and \$14 per hour respectively, although these will be phased-in over three years (see below).
- Superannuation contributions for employees with a disability will be either 10.5% of their ordinary time earnings or \$15 per week, whichever is the greater.

- The existing “Rights at Work” clause will be amended to provide a more prescriptive process for where employees wish to dispute their grading or SWS assessment outcome.

Implementation and Transitional Arrangements

The following transitional arrangements apply:

- Each supported employee must be graded into the applicable Grade (A-7) by 30 June 2023.
- Employees will receive increases in accordance with the Annual Wage Review decisions but will otherwise remain on their “current” rate of pay until such time as an SWS assessment takes place.
- This means that most employees will not get an immediate pay rise on 30 June 2023 (unless they have already been SWS-assessed).
- Employers will have until 30 June 2026 to have each employee assessed under the SWS (presumably, the timing of SWS assessments will be determined by the DSS).
- For social enterprises that have already adopted the SWS, there might be a change to wage rates from 30 June 2023 for those who have already been SWS-assessed.
- Once an SWS assessment occurs, the employee must be paid the applicable percentage of the relevant Grade, save that the rates for Grade A and B will be phased-in over three years as follows:

Grade	Date	Hourly rate
A	From 30 June 2023	\$4.75
A	From 30 June 2024	\$5.50
A	From 30 June 2025	\$6.25
A	From 30 June 2026	\$7.00
B	From 30 June 2023	\$9.50
B	From 30 June 2024	\$11.00
B	From 30 June 2025	\$12.50
B	From 30 June 2026	\$14.00

- Where the employee is graded into Grades 1-7 (i.e. not Grade A or B), there is no transitional rate. The hourly rate for that Grade is as per the Award.

Other Rules

- No employee can have their hourly rate reduced as a result of the introduction of the new wages structure.
- The existing ‘regression of disability’ clause will be retained.
- Where the employee’s new Award is lower than their “legacy” rate, employers can implement a “wage freeze” until the Award rate catches up.
- There’s an absolute minimum floor rate of \$2.75 per hour.

Rules about SWS Assessments

- Employers will have until 30 June 2026 to have each employee assessed under the SWS, unless the employee has already been SWS-assessed. The employee will then not need to be SWS-assessed for a further period of three years.
- The only circumstance in which a SWS assessment is not required (between June 2023 – June 2026, or thereafter) is where the employee operates at full productive capacity (the employee's productivity is not impaired).
- Following the initial assessment, the wage assessment of each employee will be reviewed after 12 months' service with the employer and the rate of pay is to be adjusted accordingly.
- 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 be adjusted). However, such review may only be initiated in circumstances where an employee has changed jobs or where the processes involved in the work undertaken by the employee has changed.

Next Steps

For organisations that have historically used another wage assessment tool and have not had any experience with the SWS, these changes will represent a very significant shift in the way that wages for supported employees have been set. The changes might also result in increased wage costs for organisations (although this should be softened by the creation of Grades A and B and the 3-year phasing period).

Affected organisations will need to take the following steps to prepare for the introduction of these changes:

- Grade each supported employee under the new classification structure;
- Start collecting internal productivity data on employees (described as "workplace data") which can then be given 50% weighting for the purposes of the SWS assessment; and
- Consult with employees, families and carers on these changes to ensure that people understand how their terms and conditions of employment might change.

When will the changes come into effect?

The changes come into operation from the first full pay period on or after **30 June 2023**.

To view the full decision [click here](#).

To view the determination [click here](#).

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