



Business SA Submission

AM2014/190 Transitional Provisions – District Allowances

Date: 13 May 2016

BusinessSA
South Australia's Chamber of
Commerce and Industry

Executive Summary

Business SA is pleased to have this opportunity to make an additional submission in response to the Fair Work Commission's (the Commission/FWC) pursuant to the directions handed down by the Full Bench on 17 December 2014 and subsequent directions on 7 April 2016. This submission will address The Shop, Distributors and Allied Employees' Association's (SDA) submission of 12 April 2016 for the inclusion of district allowances in the following awards:

- a. Pharmacy Industry Award 2010;
- b. General Retail Industry Award 2010;
- c. Hair and Beauty Industry Award 2010;
- d. Fast Food Industry Award 2010; and
- e. Vehicle Manufacturing, Repair Services, Retail Award 2010

Why this matter is important to South Australian businesses

As South Australia's Chamber of Commerce and Industry, Business SA is the peak business membership organisation in the State. Our members are affected by this matter in the following ways:

- SA businesses will be impacted by any changes to the award system.
- In the current economic environment SA employers need certainty that the award system is not going to change unnecessarily.
- SA employers are currently facing a significant economic downturn with regional areas affected the most.
- Regional employers in South Australia will face substantial additional costs if the allowances proposed are implemented.

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Introduction

1. Business SA strongly opposes the SDA's applications for the inclusion of district allowances in the modern awards listed in Annexure A to E of the Directions on the basis that:
 - i) The SDA has not demonstrated on a merit, evidentiary basis that the location allowance is required to make the relevant modern awards achieve the modern award objectives.
 - ii) The SDA has not sufficiently substantiated its claim that employees in all regional locations in excess of 450km from the capital cities of Australia are financially disadvantaged.
 - iii) The SDA has not sufficiently considered the cost impact on small to medium businesses.
2. We set out below our response to the SDA's applications and the evidence they rely upon.

Part 1 – Legal basis for the insertion of location allowances

Are the allowances necessary to achieve modern award objectives under s 138 of the FW Act?

3. Business SA objects to the SDA submissions that the inclusion of a location allowances is necessary to achieve the modern awards objectives under s 138 of the Fair Work Act. Section 138 states:

*“A modern award may include terms that it is permitted to include, and must include terms that it is required to include, **only to the extent necessary to achieve the modern awards objective** and (to the extent applicable) the minimum wages objective.”* (emphasis added)
4. At paragraph 11 the SDA submits that where a modern award is failing to achieve a modern award objective, the Full Bench must vary that modern award so as to include terms to the extent necessary to remedy that failure. The submissions argue the relevant awards do not provide a fair and relevant safety net for the disadvantages of low paid workers in remote locations.
5. The SDA highlights the modern awards objective; s.134 of the Fair Work Act. Here the Fair Work Commission (FWC) *‘ensure[s] that modern awards, together with the National*

*Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account certain enumerated factors.*¹

6. One of the factors is:
 - (f) *The likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden.*²
7. The SDA submits the cost impact of the increase will be negligible.
8. Business SA rejects the SDA's submission that the allowance proposed is modest and would have negligible effects. The SDA's submission of 6 March 2015 proposed employees receive either a 4% or 8% increase, based on the standard rate of pay. This increase is in addition to any future wage increase handed down at national wage reviews. Whilst Business SA notes the subsequent the submission of 12 April 2016 has removed specific percentage increase, it is our view that any increase in the regional areas of South Australia will have a significant, detrimental effect.
9. Small businesses are the backbone of many regional economies. Regional businesses already face significant financial barriers due to reduced marketplace numbers when compared to city businesses. Any further cost imposition may have significant effects on the ability to provide services to remote locations.
10. District Allowances previously only applied in Western Australia and Northern Territory, and only in specific Awards. The SDA's application seeks to broaden these allowances to States where never previously applied.
11. A decision of the Full Bench of the Australian Industrial Relations Commission confirmed such allowances were specific to Western Australia and the Northern Territory and therefore must be removed from Awards by 2015, 5 years from the completion of the Award Modernisation process.

District allowances

*[80] While it may be that historically the allowances in question are related to the cost of living in the relevant geographic areas, as indicated already, if they are to be a part of the modern award system, there must be a consistent and fair national basis for their fixation and adjustment. **We should indicate that we are concerned at this point only with allowances applying in Western Australia and the Northern Territory. We are not aware of any allowances in other States which are of significant magnitude overall to require consideration.** The Western Australian Industrial Relations Commission has regularly adjusted the district allowances applying in Western Australian awards for many years. The allowances are of course reflected in the Western Australian NAPSAs. As we understand the position, allowances in NAPSAs remain at the level they were in the relevant State award on 27 March 2006. Approximately 4 per cent of pre-*

¹ SDA submissions paragraph 16

² *Fair Work Act 2009 (Cth) s134(f)*

*reform awards applying in Western Australia include the location allowances and are therefore not a common feature of federal awards applying in that State. The Northern Territory allowance, contained in all pre-reform awards which apply in the Territory, was frozen at its current level some years ago by decision of a Full Bench. **In that decision it was indicated that the allowance was outmoded and should not be adjusted again.** There are also other allowances of this kind in the Northern Territory.*³ (emphasis added)

12. Business SA submits the SDA's application is contrary to the Minister's promise at the commencement of the award modernisation process. Julia Gillard, Hon Minister for Employment and Workplace Relations', request Under S576C91) – Award Modernisation,⁴ stated:

"The creation of modern awards is not intended to:(d) increase costs for employers;"

Are the allowances consistent with the objects under s.3 of the FW Act?

13. The SDA submits the location allowance is consistent with the object of the Fair Work Act described at s.3 *'to provide a balanced framework for cooperative and productive workplace relations that promotes national economic prosperity and social inclusion for all Australians'*.
14. A small retail employer with 5 FTE employees would incur an increase of \$7,760.48 per annum for a 4% increase and \$15,520.96 per annum for an 8% increase.⁵ Whilst acknowledging these specific percentages have been removed in the revised SDA submission, the above amounts still demonstrate that even 4% increase can have a considerable effect on a small regional business.
15. Business SA asserts such a cost increase to small businesses in low economic regions is not negligible, and is contrary to providing *'a balanced framework for cooperative and productive workplace relations that promote national economic prosperity....'*
16. The FWC must take into consideration all of the objectives of the Modern Awards and the Fair Work Act. This includes promoting productivity and economic growth⁶ and acknowledging the special circumstances of small and medium sized businesses⁷.

³ [2008] AIRCFB 1000, [80].

⁴ Julia Gillard, Hon Minister for Employment and Workplace Relations, [Award Modernisation Request](#), 2 April 2008, [2(d)].

⁵ Based on General Retail Industry Award, standard rate of pay, level 4

\$746.20 x 4% = \$29.848. \$29.848 x 52 weeks x 5 employees = \$7760.48

\$746.20 x 8% = \$59.696. \$59.696 x 52 weeks x 5 employees = \$15520.96

⁶ *Fair Work Act 2009* (Cth) s 3(a)

⁷ *Fair Work Act 2009* (Cth) s 3(g)

Part 2 – Factual basis for the insertion of location allowances.

17. The SDA states they have provided evidence that the cost of living is significantly higher in regional and remote areas. This evidence comprises witness statements from individual workers. Two workers are from employee organisations. The SDA has not provided conclusive evidence into the real cost of living in regions throughout Australia.
18. The SDA has provided a number of reports detailing the costs of living in remote areas as evidence of high costs. Use of this data is flawed on a number of levels.
19. A majority of the reports are based in Western Australia and not an indication of prices across Australia. The SDA has provided no evidence of increased prices in South Australia.
20. The SDA has stated housing prices are more expensive in regional areas. None of the witness statements confirm this claim.
21. ABS data released in 2014 clearly demonstrates the cost of regional housing, on average is significantly less expensive and that housing costs decrease the further from a capital city a person lives.⁸ The ABS data clearly rebukes the SDA claim of country housing being more expensive.
22. The SDA has provided photographs of grocery products. These photographs are not an indication of annual prices across regional areas and are of individual, selected items.
23. These individual, selected items are not compared to their metropolitan counterparts. As such they in no way demonstrate grocery prices in regional areas are higher than metropolitan areas.
24. The photos, in Queensland's far north, do not provide factual information on which to base an allowance across far regional Australia.
25. A number of the witness statements claim the cost of running a household is more expensive due to environmental factors. Business SA submits no evidence has been provided to verify this claim. Annual comparisons of heating and cooling expenses have not been provided. It could be argued cooler areas incur greater heating costs in winter.
26. From Business SA's perspective, no data has been provided to indicate there is a large cost disparity in South Australia. South Australia has not undergone a mining boom. Business SA would submit that, similar to Tasmania, a significant cost increase to regional employers would have a detrimental effect on their ability to employ. In an environment where the jobless rate is already higher than in capital cities⁹, increased

⁸ Australian Bureau of Statistics, 'Perspectives on Regional Australia: Housing Arrangements – Rental Rates in Local Government Areas, 2011' cat no: 1380.0.55.013,

<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/1380.0.55.013Main+Features52011>>.

⁹ Australian Bureau of Statistics, 'Labour Force, Australia, Detailed' cat no: 6291.0.55.001,

<<http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6291.0.55.001Feb%202015?OpenDocument>>.

costs, especially to smaller businesses will have a significant impact on the viability of the business to provide services to the area.

Part 3 – Draft Determinations of the SDA

27. Business SA would also like to highlight the error in the draft determinations as drafted by the SDA in their submission dated 6 March 2015 and revised submission dated 12 April 2016. Each of the clauses of the draft determinations state:

*An employee in a location more than 450km but less than 900km by geodesic distance from **any state or capital territory** will in addition to all other payments be paid an allowance per week of 4.0% of the standard rate, for the disadvantages of working in that location.*¹⁰ (emphasis in bold added)

28. Business SA submits the wording ‘from any state or capital territory’ does not provide any clarity on the intended meaning of the clause. This Clause was amended in the SDA submissions in reply dated 4 May 2015, however the original, ambiguous version has been included in the SDA submissions of 12 April 2016.

Conclusion

29. The SDA has not provided any evidence specific to the increased costs in South Australia, Victoria and Tasmania and therefore the argument this allowance should be applied universally across regional Australia is not valid.
30. The SDA has handpicked more the expensive regional areas and have not included areas where costs such as housing are significantly lower than capital cities.
31. The SDA has not provided any evidence to justify an increase in the allowances for locations greater than 450km as appropriate.
32. The SDA has excluded the towns of Cairns and Townsville but have not taken into consideration other significant regional areas such as Alice Springs.
33. The SDA has not taken into consideration the economic impact on regional employers, which Business SA maintains is significant.
34. Throughout Australia there is significant cost of living disparity between each regional centre. It is flawed to impose standardised cost increases on regional businesses based on distance from all capital cities.
35. The premise that employers and businesses should be responsible to pay for the cost of remote living is flawed. An increase wages cost may in turn push up prices further as

¹⁰ SDA, Four Yearly Review of Modern Awards – District Allowances, 6 March 2015, pages 12-16.

regional employers, many of which are struggling, pass on the additional costs in order to survive.