

Our ref: DAS:17070

16 February 2018

Ms Michelle Robinson  
Associate to Kovacic DP  
Fair Work Commission  
80 William Street East  
SYDNEY NSW 2011

**By email:**  
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**amod@fwc.gov.au**

Dear Associate

**AM2014/190: District Allowances Modern Awards Review**

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We refer to the above matter and to the directions of Kovacic DP dated 21 December 2017.

By way of filing, please find **enclosed** the following documents:

1. SDA's Outline of Submissions dated 16 February 2018;
2. Witness statements of:
  - a. Foon Meng Cheng;
  - b. Makere (Manu) Brown;
  - c. David Carter;
  - d. Gillian Nolan;
  - e. Marites Giltrap;
  - f. Sunserae Churchill;
  - g. Shania Simons;
  - h. Lee-Anne Hughes-Gage;
  - i. Robert Bassett;
  - j. Peter O'Keeffe.

The SDA also continues to rely upon the witness statements of Lee-Anne Hughes-Gage and Robert Bassett filed on 12 April 2016. The SDA otherwise does not rely on any materials previously filed.

Should you have any queries, please do not hesitate to contact us on (08) 9428 3333.

Yours faithfully



David Scaife  
Legal Practice Director  
**EUREKA LAWYERS**

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Fair Work Commission

*Fair Work Act 2009*

Part 2-3, Div 4 – 4 yearly review of modern awards

## **AM2014/190 – DISTRICT ALLOWANCES**

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### **SDA'S OUTLINE OF SUBMISSIONS**

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#### **A. Background**

1. On 27 October and 17 December 2014, the Shop, Distributive and Allied Employees' Association (**SDA**) filed a number of applications in the "Award Stage" of the Fair Work Commission's (**FWC**) 4 yearly review of modern awards (**Review**) proposing the introduction of district allowances.
2. On 8 December 2017, the SDA amended its proposal to support the introduction of a district allowance only in the Kimberley, Pilbara and Gascoyne regions of Western Australia (**SDA Regions**).
3. Applications have been filed in relation to the following modern awards (**Relevant Awards**):
  - (a) General Retail Industry Award 2010;
  - (b) Fast Food Industry Award 2010;
  - (c) Vehicle Manufacturing, Repair, Services, Retail Award 2010;
  - (d) Pharmacy Industry Award 2010;
  - (e) Hair and Beauty Industry Award 2010.

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Filed on behalf of (name & role of party)	SDA, Applicant Union		
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4. The SDA relies upon the following public materials in support of its proposal:<sup>1</sup>
  - (a) WA Department of Primary Industries and Regional Development (2017). [Regional Price Index 2017 \(RPI 2017\)](#);
  - (b) Australian Bureau of Statistics (2011; 2016 forthcoming), [2011 Australian Statistical Geography Standard \(ASGS\): Volume 5 – Remoteness Structure](#).
  - (c) WA Government (1982), *Map of Heat Discomfort in Western Australia*, which forms Annexure SDA-2 of these submissions.
  - (d) S Bradley, C Green, and G Leeves (2006). [“The role of pecuniary and non-pecuniary factors in teacher turnover and mobility decisions”](#). Economics Working Paper Series, The Department of Economics, Lancaster University (**Queensland Teachers Report**).
5. The public materials provide objective data about the disabilities that workers in the SDA Regions face in terms of cost of living, climate, and isolation.
6. Those public materials are supplemented by the witness statements of the following lay witnesses employed in the industries covered by the Relevant Awards in the SDA Regions:
  - (a) Foon Meng Cheng;
  - (b) Makere (Manu) Brown;
  - (c) David Carter;
  - (d) Gillian Nolan;
  - (e) Marites Giltrap;
  - (f) Sunserae Churchill;
  - (g) Shania Simons;
  - (h) Lee-Anne Hughes-Gage;
  - (i) Robert Bassett.
7. The evidence of the lay witnesses corroborates the higher cost of living experienced by workers in the SDA Regions. Their evidence also elaborates on the particular challenges faced by workers in the SDA Regions in terms of climate and isolation.

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<sup>1</sup> 4 yearly review of modern awards – penalty rates [2016] FWCFB 965.

8. Finally, the SDA relies on the witness statement of the Secretary of its Western Australian Branch, Peter O’Keeffe. Mr O’Keeffe’s evidence goes to the practicality of collective bargaining in the SDA Regions.

**B. Outline of the SDA’s proposal**

9. The SDA proposes the insertion of a clause to the following effect into the Relevant Awards:

*An employee in*

...

*the Shire of Ashburton, the Shire of Broome, the Shire of Carnarvon, the Shire of Derby-West Kimberley, the Shire of East Pilbara, the Shire of Exmouth, the Shire of Halls Creek, the City of Karratha, the Town of Port Hedland, the Shire of Shark Bay, the Shire of Upper Gascoyne and the Shire of Wyndham-East Kimberley in Western Australia*

...

*will in addition to all other payments be paid an hourly allowance for the exigencies of working in those locations of 4.28% of the standard rate.*

10. A clause to this effect already exists in relation to employees in the County of Yancowinna in New South Wales all the Relevant Awards, save for the Vehicle Manufacturing, Repair, Services, Retail Award 2010.
11. The local government areas specified in the SDA’s proposal constitute the whole of the SDA Regions. They are historical and well-recognised regions in the remote North West of Australia that are routinely used by the WA Government in the coordination of service delivery and regional development.<sup>2</sup>
12. Annexure SDA-1, produced by the WA Department of Water, identifies the areas of Western Australia covered by the SDA Regions, as well as their constituent local government areas.
13. As is obvious from Annexure SDA-1, the SDA Regions are vast in geographic area. The Kimberley, Pilbara and Gascoyne cover areas of, respectively, 423,517km<sup>2</sup>, 502,000km<sup>2</sup>, and 137,938km<sup>2</sup>.
14. The SDA Regions are also sparsely populated. The Kimberley, Pilbara, and Gascoyne have populations of, respectively, 36,392, 61,435, and 9,757 people.<sup>3</sup> Furthermore, it

<sup>2</sup> *Regional Development Commissions Act 1993 (WA)*, Schedule 1.

<sup>3</sup> Australian Bureau of Statistics (2016). [Data by Region](#).

is likely that these figures overstate the permanent populations of the SDA Regions, which have highly transient populations by reason of significant fly in, fly out resources industries and remote Aboriginal communities.

### C. Principles for varying modern awards

15. The FWC is required to conduct the Review by s 156(1) of the FW Act. In conducting the Review, s 156(2)(b)(i) provides that the FWC may make one or more determinations varying modern awards.

#### Nature of the discretion to vary a modern award

16. In *4 Yearly Review of Modern Awards: Preliminary Jurisdictional Issues* [2014] FWCFB 1788 (***Preliminary Jurisdictional Issues Case***), the Full Bench considered what is required to trigger the FWC's discretion to vary a modern award under s 156(2)(b)(i). The Full Bench commented at [38] to [39]:

*The Commission is obliged to ensure that modern awards, together with the NES, provide a fair and relevant minimum safety net taking into account, among other things, the need to ensure a 'stable' modern award system (s.134(1)(g)). The need for a 'stable' modern award system suggests that a party seeking to vary a modern award in the context of the Review must advance a merit argument in support of the proposed variation. The extent of such an argument will depend on the circumstances. We agree with ABI's submission that some proposed changes may be self evident and can be determined with little formality. However, where a significant change is proposed it must be supported by a submission which addresses the relevant legislative provisions and be accompanied by probative evidence properly directed to demonstrating the facts supporting the proposed variation.*

*In conducting the Review the Commission will also have regard to the historical context applicable to each modern award. Awards made as a result of the award modernisation process conducted by the former Australian Industrial Relations Commission (the AIRC) under Part 10A of the Workplace Relations Act 1996 (Cth) were deemed to be modern awards for the purposes of the FW Act (see Item 4 of Schedule 5 of the Transitional Act). Implicit in this is a legislative acceptance that at the time they were made the modern awards now being reviewed were consistent with the modern awards objective. The considerations specified in the legislative test applied by the AIRC in the Part 10A process is, in a number of important respects, identical or similar to the modern awards objective in s.134 of the FW Act. In the Review the Commission*

*will proceed on the basis that prima facie the modern award being reviewed achieved the modern awards objective at the time that it was made.*

17. The Full Bench particularly commented at [38] to [39] on the need for any variation to be necessary in achieving the modern awards objective set out in s 134:

*Under s.157(1) the Commission must be satisfied that ‘a determination varying a modern award... is necessary to achieve the modern awards objective. In Shop, Distributive and Allied Employees Association v National Retail Association (No 2) (SDA v NRA (No 2)) Tracey J considered the proper construction of s.157(1). His Honour held:*

“The statutory foundation for the exercise of FWA’s power to vary modern awards is to be found in s 157(1) of the Act. The power is discretionary in nature. Its exercise is conditioned upon FWA being satisfied that the variation is “necessary” in order “to achieve the modern awards objective”. That objective is very broadly expressed: FWA must “provide a fair and relevant minimum safety net of terms and conditions” which govern employment in various industries. In determining appropriate terms and conditions regard must be had to matters such as the promotion of social inclusion through increased workforce participation and the need to promote flexible working practices.

The subsection also introduced a temporal requirement. FWA must be satisfied that it is necessary to vary the award at a time falling between the prescribed periodic reviews.

The question under this ground then becomes whether there was material before the Vice President upon which he could reasonably be satisfied that a variation to the Award was necessary, at the time at which it was made, in order to achieve the statutory objective...

In reaching my conclusion on this ground I have not overlooked the SDA’s subsidiary contention that a distinction must be drawn between that which is necessary and that which is desirable. That which is necessary must be done. That which is desirable does not carry the same imperative for action. Whilst this distinction may be accepted it must also be acknowledged that reasonable minds may differ as to whether particular action is necessary or merely desirable. It was open

to the Vice President to form the opinion that a variation was necessary.”

*We are satisfied that s.138 is relevant to the Review. We also accept that the observations of Tracey J in SDA v NRA (No.2), as to the distinction between that which is “necessary” and that which is merely desirable, albeit in a different context, are apposite to any consideration of s.138.*

#### Interpretation of the modern awards objective

18. Section 138 provides that:

*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.*

19. The modern awards objective is set out in s 134(1) as follows:

*The FWC must ensure that modern awards, together with the National Employment Standards, provide a fair and relevant minimum safety net of terms and conditions, taking into account:*

- (a) relative living standards and the needs of the low paid; and*
- (b) the need to encourage collective bargaining; and*
- (c) the need to promote social inclusion through increased workforce participation; and*
- (d) the need to promote flexible modern work practices and the efficient and productive performance of work; and*
- (da) the need to provide additional remuneration for:
 
  - (i) employees working overtime; or*
  - (ii) employees working unsocial, irregular or unpredictable hours; or*
  - (iii) employees working on weekends or public holidays; or*
  - (iv) employees working shifts; and**
- (e) the principle of equal remuneration for work of equal or comparable value; and*

- (f) *the likely impact of any exercise of modern award powers on business, including on productivity, employment costs and the regulatory burden; and*
- (g) *the need to ensure a simple, easy to understand, stable and sustainable modern award system for Australia that avoids unnecessary overlap of modern awards; and*
- (h) *the likely impact of any exercise of modern award powers on employment growth, inflation and the sustainability, performance and competitiveness of the national economy.*

20. The Full Bench discussed how the modern awards objective is to be interpreted in *4 yearly review of modern awards – Penalty rates* [2017] FWCFB 1001 (**Penalty Rates Case**), noting at [115]:

*The objective is very broadly expressed. The obligation to take into account the s.134 considerations means that each of these matters, insofar as they are relevant, must be treated as a matter of significance in the decision making process. No particular primacy is attached to any of the s.134 considerations and not all of the matters identified will necessarily be relevant in the context of a particular proposal to vary a modern award.*

21. In relation to the assessment of a “fair” safety net, the Full Bench noted at [117] of the *Penalty Rates Case* that “fairness in this context is to be assessed from the perspective of the employees and employers covered by the modern award in question.”
22. On the assessment of a “relevant” safety net, the Full Bench noted at [120] that “the word “relevant” is intended to convey that a modern award should be suited to contemporary circumstances.”
23. Finally, the Full Bench commented at [121] to [132] that the “safety net” is a “protective” set of “minimum terms and conditions of employment”, which, along with the National Employment Standards, “underpin” the scheme of enterprise bargaining set out in the FW Act.

#### Treatment of prior decisions

24. As discussed in greater detail below, the inclusion of district allowances in modern awards has been subject to consideration by the AIRC in the award modernisation process and by the FWC in its decisions on extending the transitional provisions. It is therefore necessary for the FWC to consider how these prior decisions should be treated in the Review.



25. In the *Preliminary Jurisdictional Issues Case*, the Full Bench discussed the weight that should be assigned to prior decisions should they be relevant to the proposals put during the Review at [25] to [27] as follows:

*Although the Commission is not bound by principles of stare decisis it has generally followed previous Full Bench decisions. In another context three members of the High Court observed in Nguyen v Nguyen:*

“When a court of appeal holds itself free to depart from an earlier decision it should do so cautiously and only when compelled to the conclusion that the earlier decision is wrong. The occasion upon which the departure from previous authority is warranted are infrequent and exceptional and pose no real threat to the doctrine of precedent and the predictability of the law: see *Queensland v The Commonwealth (1977) 139 CLR 585 per Aickin J at 620 et seq.*”

*While the Commission is not a court, the public interest considerations underlying these observations have been applied with similar, if not equal, force to appeal proceedings in the Commission. As a Full Bench of the Australian Industrial Relations Commission observed in Cetin v Ripon Pty Ltd (T/as Parkview Hotel) (Cetin):*

“Although the Commission is not, as a non-judicial body, bound by principles of stare decisis, as a matter of policy and sound administration it has generally followed previous Full Bench decisions relating to the issue to be determined, in the absence of cogent reasons for not doing so.”

*These policy considerations tell strongly against the proposition that the Review should proceed in isolation unencumbered by previous Commission decisions. In conducting the Review it is appropriate that the Commission take into account previous decisions relevant to any contested issue. The particular context in which those decisions were made will also need to be considered. Previous Full Bench decisions should generally be followed, in the absence of cogent reasons for not doing so.*

**D. Consideration of district allowances in modern awards**

26. District allowances applicable in the SDA Regions were prescribed by the following NAPSAs that preceded the Awards:

(a) Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977;

- (b) Retail Pharmacists' Award 2004;
  - (c) Fast Food Outlets Award 1990;
  - (d) Licensed Establishments (Retail and Wholesale) Award 1979;
  - (e) Supermarket and Chain Stores (Western Australia) Warehouse Award 1982;
  - (f) Hairdressers Award 1989.
27. The district allowances set out in the NAPSAs took a different form to the SDA's proposal in being weekly dollar amounts allocated to particular towns reflecting the WAIRC's Location Allowances General Order.
28. As a result, the inclusion of district allowances was discussed by the Australian Industrial Relations Commission (**AIRC**) during the award modernisation process. In *Award Modernisation* [2008] AIRCFB 717 (**September 2008 Decision**), the AIRC commented at [28] as follows:

*There is an unresolved issue concerning allowances variously described as district, locality or remote area. A number of pre-reform awards and NAPSAs contain such allowances. Questions arise about such allowances. They are by nature confined to particular locations. In that connection it is relevant that modern awards will apply throughout Australia. If it is appropriate that these allowances be included in modern awards, which is a matter for discussion, there must be a consistent and fair national basis for their fixation and adjustment. Without a rational system the inclusion of these allowances in modern awards could lead to inconsistency and consequent unfairness. We would welcome views and proposals on these questions. The allowances have not been included in the exposure drafts.*

29. In *Award Modernisation* [2008] AIRCFB 1000 (**December 2008 Decision**), the AIRC referred at [79] to its comments in the *September 2008 Decision*. The AIRC continued at [80] to [81] as follows:

*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-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.*

*In relation to the allowances in NAPSAs and pre-reform awards operating in Western Australia, it is appropriate that those should be maintained in modern awards until there is a proper opportunity to consider whether they should be a permanent feature of the awards and, if so, the basis for their fixation and adjustment. We do not intend to provide for any automatic adjustment at this stage. Because of the nature of the Northern Territory allowance, it cannot be maintained for more than five years and, because of the decision of the Full Bench, it should not be adjusted during that period. We shall provide that the district, locality or remote area allowances, described generally as district allowances, applying in Western Australia and the Northern Territory be preserved for a period of five years in a transitional provision. Most of the modern awards contain the following standard clause...*

30. District allowances were the subject of further consideration by the FWC during the early stages of the four yearly review process. In *4 yearly review of modern awards – transitional provisions* [2015] FWCFB 644 (**February 2015 Decision**), the FWC considered a submission by the ACTU to delete the sunset provisions in the transitional district allowance provisions established by the *December 2008 Decision*, concluding at [52] to [56]:

*Having considered the submissions presented, we decided to reject the ACTU's applications to delete the sunset provisions in the transitional district allowance provisions in modern awards.*

*The main reason for this decision is simply that the current transitional district allowances provisions cannot be retained in awards consistent with s.154 of the Act. By the terms of those provisions, they operate only in respect of*

*Western Australia and the Northern Territory. Subsection 154(1)(b) provides that a modern award must not include terms that "are expressed to operate in one or more, but not every, State or Territory." In these circumstances, it would be inappropriate to remove the sunset provisions and thereby purport to continue in operation the current district allowance provisions.*

*Apart from this, we do not consider that those provisions can be retained in awards consistent with the modern awards objective (ss.134 and 138). In particular, we consider that the provisions in their present form are complex, difficult to understand and apply and contrary to what is sought to be achieved through the modern award system (see s.134(1)(f) and (g)).*

*Further, we do not consider that a proper case has been made out in the present matter for this Full Bench to depart from the decision taken by the Award Modernisation Full Bench in 2008, namely that the district allowances operating in Western Australia should be preserved in modern awards for a transitional period only and "until there is a proper opportunity to consider whether they should be a permanent feature of the awards and, if so, the basis for their fixation and adjustment." As we noted in our decision, no substantive case was advanced in the proceedings before us for the retention of the allowances applying in Western Australia. In this regard, it has been indicated that the ACTU and affiliated unions will seek to have provisions inserted into various modern awards which provide compensation for employees working in remote localities and/or under harsh conditions and which are drafted having regard to the relevant provisions of the Act. This may provide the opportunity for the "full examination of all matters relevant to the allowances" to be undertaken, as contemplated by the Award Modernisation Full Bench.*

*The position regarding the Northern Territory allowances is somewhat different. We note that there were very limited submissions put to us which specifically addressed these allowances. Given the history of the allowances and the decisions taken by industrial tribunals regarding their nature and continuing relevance, we do not envisage that these allowances could be retained in modern awards.*

31. The FWC reached a different conclusion later in the *February 2015 Decision* in relation to the Broken Hill allowance. The FWC retained the Broken Hill allowance, stating at [62] to [63]:

*We note that the Broken Hill allowance is in different terms to the transitional provisions relating to district allowances in Western Australia and the Northern Territory. The entitlement to the allowance is specified in the four awards and is expressed as a percentage figure of the standard rate under the award. It does not require reference to any other instruments. The calculation of the allowance is therefore straightforward and the allowance is not a term or condition of employment determined by reference to State or Territory boundaries.*

*In these circumstances, we cannot conclude on a similar basis as in relation to the district allowances in Western Australia and the Northern Territory that the Broken Hill allowance should not be maintained as part of the safety net for workers covered by the relevant awards. On the basis of the limited material before us, we are satisfied that the maintenance of the Broken Hill allowance in the awards is appropriate having regard to the modern awards objective (ss.134 and 138) and other relevant considerations. The allowance will therefore be retained in the awards.*

32. An application to correct this decision on the basis that it was made in error was dismissed by the FWC: *4 yearly review of modern awards – transitional provisions* [2015] FWCFB 2835.
33. The decision to include the Broken Hill allowance was challenged in *ACCI v ACTU* [2015] FCAFC 131 (***Broken Hill Case***) on the basis that the allowance was a “State-based difference term” within the meaning of s 154(1) of the FW Act. That challenge was unsuccessful.
34. In the *Broken Hill Case*, Buchanan J traced the origins of district allowances at [15] to [19]. His Honour noted at [15] that “District, locality, zone, isolation and climatic allowances have been features of the federal (and State) award landscape for a long time.” Comments to similar effect were made by Flick J at [52].

#### **E. Guidance from decisions**

35. The SDA submits that, having regard to the decisions set out in parts C and D above, the Full Bench should be guided by the following principles in its consideration of the SDA’s proposal:
  - (a) District allowances are permitted terms under s 139(1)(g); they are not “State-based difference terms” prohibited by s 154(1).

- (b) District allowances have been part of the industrial relations safety net in Australia, and particularly the SDA Regions, since at least the 1920s. They are well-established as a mechanism through which workers in remote areas of WA are compensated for the disabilities associated with working in those areas.
- (c) In making a value judgment about whether the SDA's proposal is necessary to achieve the modern awards objective, the FWC should have regard to the following circumstances:
  - (i) the significance of the SDA's proposal;
  - (ii) the substantial history of district allowances in the SDA Regions;
  - (iii) the manner in which district allowances in the SDA Regions were rejected during the modernisation and transitional processes.
- (d) The AIRC's expressed desire for a "rational system" setting out "a consistent and fair national basis for their fixation and adjustment" must be interpreted only as a reformulation of certain factors of the modern awards objective. To interpret the AIRC's statement as requiring something more stringent than, or additional to, an assessment of whether the proposal is necessary to achieve the modern awards objective would place an unwarranted fetter on the exercise of the FWC's discretion.
- (e) The FWC, and its predecessors, have never made a decision on the merits of inserting, or even maintaining, district allowances in modern awards by reason of its misapprehension about the scope of s 154(1)(b). The FWC is therefore not constrained by any of its earlier decisions in considering the merits of the SDA's proposal.

**F. Extent of merits case required**

36. In considering the extent of the merits argument in relation to the SDA's proposal, the FWC should have regard to the following:
- (a) The proposal, while not trivial, is not a significant change in that it:
    - (i) broadly reflects the location allowances that state-system employers are currently required to pay in the SDA Regions;
    - (ii) is limited in the areas in which it operates to some of the most remote, and least populated, areas of Australia;
    - (iii) replicates a system of district allowances in the SDA Regions that was only recently removed from the transitional provisions, meaning that the

payment of district allowances in the SDA Regions is familiar to national system employers and employees, and unlikely to cause any significant economic disruption.

- (b) The history of district allowances in the SDA Regions indicates a long-standing and accepted need for compensation for the disabilities associated with working in these regions.
  - (c) It is arguable that district allowances in the SDA Regions were improperly excluded from being permanent features of the Relevant Awards during both the modernisation and transitional processes largely by reason of the FWC's misapprehension about the scope of s 154(1)(b).
37. In the circumstances, it would be open to the FWC to be satisfied that the SDA's proposal is necessary in order to achieve the modern awards objective if the FWC is satisfied of the continued existence of the disabilities that have historically justified district allowances in the SDA Regions, particularly by reference to cost of living, climate and isolation.

#### **G. History of district allowances in the SDA Regions**

38. District allowances were first provided for in the SDA Regions by the WA Court of Arbitration in 1923.<sup>4</sup> The allowances applied to workers in Carnarvon (22s per week), Onslow and Port Hedland (28s per week), Broome and Derby (34s per week) and Wyndham (46s per week). However, no reasons were given for their introduction.<sup>5</sup>
39. No substantial consideration was given to district allowances until the WA Court of Arbitration revisited the issue in 1958.<sup>6</sup> The Court ultimately considered that district allowances in the SDA Regions, as well as other regions of WA, were justified by the cost of living, climate and isolation experienced by workers in these towns.
40. In considering these three factors, Neville J placed greatest weight upon the high cost of living, and undertook detailed analysis of this factor with the assistance of the WA Government Statistician.<sup>7</sup> The modern approach to calculating cost of living for the purposes of the WAIRC's Location Allowances General Order is now reflected in the RPI 2017.

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<sup>4</sup> *Engineering Awards of 1923* (1923) 3 WAIG 111.

<sup>5</sup> *Engineering Awards of 1923* (1923) 3 WAIG 98.

<sup>6</sup> *AWU v Minister for Works* (1958) 38 WAIG 68 (**1958 Decision**).

<sup>7</sup> *1958 Decision*, 685-689.

41. Neville J then considered the impact that climate and isolation should have on the district allowances. His Honour explained that climate included:<sup>8</sup>

*the physical discomfort and disadvantages involved... the additional expenses entailed in maintenance of motor vehicles, homes, and furniture and furnishings, besides the occasional damage caused by cyclones.*

42. Neville J further explained that isolation included:<sup>9</sup>

*disadvantages due to the distance of these areas from the capital city, the smallness of the population, the transport facilities available, the lack of amenities that would normally be available in the Kalgoorlie-Boulder area or in the metropolitan area. The lack of dental and optometric services and of specialist medical attention when needed. The increased costs involved in the secondary education of children and the increased costs of holidays for the worker and his family.*

43. The WAIRC conducted its next detailed consideration of district allowances in 1980.<sup>10</sup> In *District and Location Allowances* (1980) 60 WAIG 1141, Kelly C reformulated the way in which the factors of cost of living, climate and isolation were factored into district allowances, ultimately finding that “the existing allowances are not adequate and are in need of review”.<sup>11</sup> Kelly C also later noted that the allowances should “only be reviewed when such changes can be clearly demonstrated”.<sup>12</sup>

44. While district allowances of varying quanta have been applied to regions throughout WA for some time, the decisions establishing them in 1923, together with the *1958 Decision* and the *1980 Decision*, demonstrate that greatest need has always existed in the SDA Regions.

45. The history of district allowances in the SDA Regions discloses that, while adjustments have been made over decades, the basic need for them has remained consistent. The cost of living, effects of climate, and (to a lesser extent) level of isolation may fluctuate from year to year, yet there has been no shift in the extent of these disabilities in the SDA Regions such that any party has ever sought to remove them.

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<sup>8</sup> *1958 Decision*, 689.

<sup>9</sup> *1958 Decision*, 690.

<sup>10</sup> *District and Location Allowances* (1980) 60 WAIG 1141 (**1980 Decision**).

<sup>11</sup> *1980 Decision*, 1151.

<sup>12</sup> *1980 Decision*, 1152.



## H. Evidence of disabilities associated with working in the SDA Regions

46. The materials relied on by the SDA constitutes very recent evidence that these disabilities continue to exist, and are of considerable magnitude.

### Cost of living

47. The high cost of living in the SDA Regions has historically been the primary justification for district allowances.
48. The RPI 2017 produced by the Western Australian Department of Regional Development establishes that the cost of a common, weighted basket of goods was 12.9% higher in the Kimberley, 10.7% higher in the Pilbara, and 9.1% higher in the Gascoyne.<sup>13</sup>
49. Importantly, the higher cost of living in the SDA Regions is not attributable to any one category, or restricted to discretionary goods. Indeed, the cost of the most basic necessities, such as food and health care, is significantly higher in the SDA Regions. The cost of food is 12.4% higher in the Kimberley, 10.3% higher in the Pilbara, and 8.5% higher in the Gascoyne.<sup>14</sup> The cost of health and personal care is 8.1% higher in the Kimberley, 11.6% higher in the Pilbara, and 7.9% higher in the Gascoyne.<sup>15</sup>
50. Furthermore, the comparison table demonstrates that the cost of living is persistently and substantially higher in the SDA Regions compared to other regions of WA, notwithstanding short-term variations.<sup>16</sup>
51. The lay witnesses give consistent evidence about the high cost of living in the SDA Regions.
52. All lay witnesses comment on the increased cost of groceries, such as vegetables and meat, compared to other metropolitan areas that they have lived in or visited.<sup>17</sup> They also note that, despite the higher cost, the produce is often poorer quality.<sup>18</sup>
53. The services that the witnesses receive are more expensive. For example, electricity bills increase by virtue of the need for regular air conditioning. Purchasing goods that

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<sup>13</sup> RPI 2017, 6-7.

<sup>14</sup> RPI 2017, 6, 8.

<sup>15</sup> RPI 2017, 6, 13.

<sup>16</sup> RPI 2017, 6.

<sup>17</sup> Witness Statement of Foon Meng Cheng (**Cheng**), [8]-[9]; Witness Statement of Makere (Manu) Brown (**Brown**), [7]-[9]; Witness Statement of David Carter (**Carter**), [14]-[15]; Witness Statement of Gillian Nolan (**Nolan**), [11]-[12]; Witness Statement of Marites Giltrap (**Giltrap**), [10]-[13]; Witness Statement of Sunserae Churchill (**Churchill**), [10]; Witness Statement of Shania Simons (**Simons**), [10]-[12]; Statutory Declaration of Lee-Anne Hughes-Gage (**Hughes-Gage**), [3]-[6], [19]; Statutory Declaration of Robert Bassett (**Bassett**), [34].

<sup>18</sup> Cheng, [10]-[11]; Brown, [9]-[10]; Carter, [11]-[12].

are not readily available locally, such as furniture, involve incurring additional shipping costs.<sup>19</sup>

54. Importantly, the high costs faced by workers in the SDA Regions are exacerbated by their low pay.
55. Ms Churchill gives evidence to the effect that she has a gross fortnightly income of \$673.80.<sup>20</sup> In the same period, she spends about \$300 to \$400 solely on groceries, meaning that 60% of her income is taken up on food.<sup>21</sup>
56. Similarly, Ms Brown comments as follows:<sup>22</sup>

*I would say that an average weekly shop costs about \$300.00 per week, even though sometimes I don't make that much. Most of my pay goes on food and personal expenses each week.*

57. Ms Hughes-Gage explains the pressure that the cost of living (relative to her income) placed on her family after her husband passed away in January 2015.<sup>23</sup>
58. On the basis of the materials relied on by the SDA, the FWC can be comfortably satisfied that the cost of living continues to disproportionately and negatively impact on the value of the minimum terms and conditions prescribed for employees working in the industries covered by the Relevant Awards.

### Climate

59. The climate in the SDA Regions is extremely hot and humid, and characterised by periodic severe weather events.
60. The “Relative Strain Index” is an estimate produced by the Bureau of Meteorology of the average number of days when the relative heat index exceeds the critical comfort level at 3.00pm. The WA Government defines areas of high heat discomfort as being locations north of the 26<sup>th</sup> Parallel and/or north of the 50-day Relative Strain Index.<sup>24</sup>
61. The 26<sup>th</sup> Parallel passes through the Shire of Shark Bay, the southernmost local government area covered by the SDA’s proposal.
62. Annexure SDA-3 delineates regions of WA according to the average number of days experienced above the “Relative Strain Index”. The Kimberley experiences upwards

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<sup>19</sup> Carter, [16].

<sup>20</sup> Churchill, [3].

<sup>21</sup> Churchill, [7].

<sup>22</sup> Brown, [6].

<sup>23</sup> Hughes-Gage, [7]-[10].

<sup>24</sup> Menck, C (2014). [A Thematic History of Government Housing in Western Australia](#), WA Department of Housing, 315-316.

of 200 discomfort days per year; the Pilbara and Gascoyne experience upwards of 100.

63. While Annexure SDA-3 is old (apparently having been compiled in 1982), there is no reason to think that the climate has cooled or otherwise improved in the SDA Regions since that time.
64. The evidence of the lay witnesses is again consistent with the public materials.
65. Several of the witnesses gives evidence that he or she is reliant on air conditioning at home in order to cope with the heat.<sup>25</sup> This results in higher power bills during much of the year.<sup>26</sup>
66. Furthermore, the climatic discomfort extends to the workplace where it is not fully or consistently addressed by air conditioning.
67. Ms Cheng notes that:<sup>27</sup>

*The very hot weather causes difficulties even at work. The air conditioning at work has to overwork because it's so hot outside, which means that it is not cool enough inside. The air conditioning also sometimes just shuts down.*

*I would say that there are at least a few days each month where it is hot even on the shop floor.*

*I also notice the heat when I am carrying stock from the loading zone into the store. It gets very hot near the back door most days.*

68. Ms Cheng's evidence in this regard is corroborated by the evidence of Ms Nolan, who shops at the K-Mart at which Ms Cheng works. Ms Nolan describes it as being "horrible to go in there when the air-conditioning isn't working properly."<sup>28</sup>
69. Ms Giltrap describes similar problems with the heat during working at McDonald's as follows:<sup>29</sup>

*You get exhausted from the heat; it wears you out while you are working.*

*The air-conditioning at work doesn't seem to be able to handle the heat. It is okay in winter, but it gets very hot at work in summer. It's especially hard for me because I work in the kitchen. I get very hot when cooking on the grill in summer.*

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<sup>25</sup> Cheng, [18]; Brown, [16]; Carter, [18]-[19]; Hughes-Gage, [28]; Bassett, [34].

<sup>26</sup> Cheng, [19]; Brown, [17]; Carter, [18]; Bassett, [34].

<sup>27</sup> Cheng, [15]-[17].

<sup>28</sup> Nolan, [26].

<sup>29</sup> Giltrap, [18]-[19].

70. Ms Brown notes that, even though the air conditioning in her store is “quite good”, she is “constantly having to wipe down any glass surfaces” because of the humidity.<sup>30</sup> Ms Brown also comments on the difficulties posed by doing fire drills in the heat.<sup>31</sup>
71. Severe weather events in the SDA Regions, such as cyclones and flooding, cause damage to property,<sup>32</sup> shortages of groceries,<sup>33</sup> difficulties keeping fresh food,<sup>34</sup> increased complaints at work,<sup>35</sup> and difficulties getting to and from work.<sup>36</sup>

### Isolation

72. The SDA Regions are defined as “very remote” by the Australian Bureau of Statistics, which is used by the Australian Government in the development and coordination of policy.<sup>37</sup>
73. Several of the lay witnesses recount the difficulties the remoteness of the SDA Regions cause in terms of access to health care, education, transport, and community amenities.
74. The lay witnesses variously describe the lack of dental,<sup>38</sup> ophthalmic,<sup>39</sup> rheumatology,<sup>40</sup> chiropractice,<sup>41</sup> and medical scanning services<sup>42</sup> in the SDA Regions, which necessitates travel to Perth.
75. Ms Cheng describes a recent period when her husband was required to travel to Perth as often as two to three times to seek medical attention for double vision. It took more than two years for a diagnosis to be made. Ms Cheng comments on the stresses experienced during that period:<sup>43</sup>

*I remember one time we flew down to Perth and had to stay for a few weeks waiting for different appointments. After about three weeks, the motel informed us that we couldn't stay anymore because they were fully booked. We didn't have anywhere else to stay, so we had to reschedule the appointment so we could go home to Hedland and then come back another time.*

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<sup>30</sup> Brown, [18].

<sup>31</sup> Brown, [19].

<sup>32</sup> Simons, [18].

<sup>33</sup> Carter, [20].

<sup>34</sup> Cheng, [23].

<sup>35</sup> Brown, [32].

<sup>36</sup> Simons, [19]; Churchill, [18].

<sup>37</sup> Australian Bureau of Statistics (2011; 2016 forthcoming), *2011 Australian Statistical Geography Standard (ASGS): Volume 5 – Remoteness Structure*.

<sup>38</sup> Carter, [43].

<sup>39</sup> Cheng, [28].

<sup>40</sup> Brown, [26].

<sup>41</sup> Churchill, [34].

<sup>42</sup> Cheng, [26]; Nolan, [30]; Giltrap, [27].

<sup>43</sup> Cheng, [34].

76. In contrast, Ms Brown cannot afford to travel to Perth when her partner requires medical attention.<sup>44</sup>

77. Workers in the SDA Regions also forego educational opportunities because there are limited local options. Mr Carter says:<sup>45</sup>

*I started a basic computer course about 6 or 7 years ago at the local TAFE, but they had to stop the course because the lecturer left town and it wasn't available online. I completed a couple of modules before the lecturer left, but I didn't receive any accreditation for it because I didn't get to complete anything.*

78. Ms Brown talks about the challenges for the children of low paid families who cannot attend university because they cannot afford the move to Perth:<sup>46</sup>

*My granddaughter, who is 19 years old, is very bright and did well at school. I know that she would like to study drama at university.*

*My granddaughter is eligible to go to university, but there are no university facilities here. It's just unaffordable for her to move to Perth because of the moving costs and the work that she would have to do to pay for her accommodation and other living costs.*

79. Ms Simons is studying online, but notes that there are significant challenges in doing so because of a lack of physical attendance and an unreliable internet connection.<sup>47</sup>

80. The lack of educational opportunities is concomitant with a lack of choices in terms of work and training. Ms Churchill comments that:

*There aren't many career opportunities in Port Hedland. I have worked in the legal field for 20 years, but I wasn't able to get a job in that field when I moved here. I ended up working for Woolworths because that was the only work available. I've had to take a significant drop in my salary because I couldn't keep working in law.*

81. The lay witnesses additionally describe limited and more expensive options for travel both within their communities and outside of them.

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<sup>44</sup> Brown, [24]-[25].

<sup>45</sup> Carter, [34].

<sup>46</sup> Brown, [27]-[28].

<sup>47</sup> Simons, [20]-[21].

82. Ms Nolan describes the cost of a taxi fare in Karratha as “phenomenal”.<sup>48</sup> Ms Brown has been forced to choose which funerals she attends.<sup>49</sup> Several witnesses say that public transport options are limited or non-existent.<sup>50</sup>
83. Towns in the SDA Regions are also occasionally completely cut off by flooding<sup>51</sup> or even simply by road accidents.<sup>52</sup>

**I. Necessary to achieve the modern awards objective**

84. The SDA submits that the materials summarised above demonstrate that, without district allowances, the Relevant Awards do not achieve the modern awards objective.
85. It is appropriate that the failure of the Relevant Awards to achieve the modern awards objective be considered concurrently with the SDA’s proposal as the solution.<sup>53</sup>

(a) relative living standards and the needs of the low paid

86. There is no doubt that the employees covered by the Relevant Awards are low paid workers.<sup>54</sup> The evidence in this matter is consistent with that proposition.<sup>55</sup>
87. The reports relied on by the SDA definitively establish that the cost of living is significantly higher in the SDA Regions.
88. The higher cost of living in the SDA Regions is corroborated by all of the lay witnesses, who have each noted the difference between the costs of groceries and utilities in the SDA Regions compared to metropolitan areas that they visit or have previously lived in.<sup>56</sup>
89. The result is that, in order to maintain a standard of living that is relative to that experienced by employees in less remote regions, employees in the SDA Regions are required to incur significantly greater costs. The value of their wages is therefore diminished in real terms.
90. Furthermore, there is substantial evidence that, despite being required to incur greater costs, the quality of the goods and services available in the SDA Regions is inferior to the quality experienced elsewhere.

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<sup>48</sup> Nolan, [18]. See also Carter, [28].

<sup>49</sup> Brown, [33].

<sup>50</sup> Cheng, [41]; Brown, [37]; Carter, [29]; Churchill, [36]-[37].

<sup>51</sup> Simons, [18]; Cheng, [23]-[24].

<sup>52</sup> Brown, [30]-[31].

<sup>53</sup> *National Retail association v Fair Work Commission* [2014] FCAFC 118, [113].

<sup>54</sup> *Re SDA* [2014] FWCFB 1846, [120].

<sup>55</sup> Cheng, [4]; Brown, [3]; Carter, [3]; Nolan, [3]; Giltrap, [4]; Churchill, [3]; Simons, [4]; Hughes-Gage, [11]; Bassett, [9].

<sup>56</sup> Cheng, [8]-[9]; Brown, [7]-[9]; Carter, [14]-[15]; Nolan, [11]-[12]; Giltrap, [10]-[13]; Churchill, [10]; Simons, [10]-[12]; Hughes-Gage, [3]-[6], [19]; Bassett, [34].

91. All witnesses give evidence of the extreme climate, which impacts both on their comfort at work and produces further increases to the cost of living in the form of higher utility charges.
92. In order to address these issues, several of the lay witnesses note that district (or other) allowances are relatively common in the SDA Regions.
93. Ms Hughes-Gage notes that her employer provides its Store Manger and Department Managers at Port Hedland with accommodation.<sup>57</sup> Ms Hughes-Gage also receives a location allowance under an enterprise agreement that assists with the disadvantages she faces.<sup>58</sup>
94. Similarly, Ms Nolan's husband receives an allowance towards their electricity bill from his employer,<sup>59</sup> as well as a number of flights paid for each year.<sup>60</sup> Ms Cheng is aware that some of her friends and co-workers receive allowances for housing, air conditioning and flights "as part of their employment to compensate them for living in Hedland."<sup>61</sup> Ms Giltrap's husband receives rental assistance from his employer.<sup>62</sup>
95. The Department of Defence classifies all locations within these regions as 'Grade E', being the most remote category deserving of the highest rate of district allowance.<sup>63</sup>
96. In this context, while district allowances may often be a relatively small part of an overall wage, they are proportionately more important to the low paid workers covered by the Relevant Awards.
97. In this respect, it is worth noting that, even relatively well-paid workers such as employees of the Department of Defence, receive district allowances for working in the SDA Regions. The SDA Regions are recognised by the Department of Defence as 'Grade E', being the most remote category deserving of the highest rate of district allowance.

(b) the need to encourage collective bargaining

98. District allowances are ill-suited to resolution through collective bargaining.
99. The population of the SDA Regions is small and sparse.<sup>64</sup> There are particular difficulties for unions to organise workers in the SDA Regions, and therefore to

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<sup>57</sup> Hughes-Gage, [22].

<sup>58</sup> Hughes-Gage, [30].

<sup>59</sup> Nolan, [6].

<sup>60</sup> Nolan, [21].

<sup>61</sup> Cheng, [13].

<sup>62</sup> Giltrap, [6].

<sup>63</sup> Department of Defence, [ADF Pay and Conditions Manual](#), Annexure 4.4A.

<sup>64</sup> O'Keeffe, [17].

coordinate bargaining in a way that would effectively address the disabilities experienced by these workers.<sup>65</sup>

100. Furthermore, most enterprise agreements in the industries covered by the Relevant Awards are negotiated on a national basis.<sup>66</sup> The workers in the SDA Regions covered by these enterprise agreements is extremely small as a percentage of the overall employees covered.<sup>67</sup>
101. It is reasonable for the FWC to infer that it would be extremely difficult for such a small subset of employees covered by an enterprise agreement to bargain in relation to conditions that uniquely only impact upon them.<sup>68</sup>
102. In contrast, the insertion of district allowances would create a minimum safety net that covers the disabilities experienced by workers in the SDA Regions. That would enable those workers to then bargain for additional terms and conditions of employment, either by additions to the existing protections or by trading district allowances for higher base rates of pay.
103. District allowances are also currently available in a number of public sector arrangements,<sup>69</sup> as well as the state system. The failure to include district allowances in modern awards generates a disparity between these employers.
104. In those circumstances, employers will be less likely to bargain with employees because the gap between award reliant and agreement covered workers is wider.<sup>70</sup>
105. In contrast, the establishment of minimum district allowances is likely to encourage collective bargaining by providing a basic entitlement that both retains employees who are more likely to collectively bargain with their employer, and provides opportunities for employees and employers to bargain variations.

(c) the need to promote social inclusion through increased workforce participation

106. The FWC has previously noted that “social inclusion encompasses both the obtaining of employment and the pay and conditions attaching to the job concerned”.<sup>71</sup>
107. District allowances operate as compensating wage differentials that alleviate the disabilities associated with working in remote areas. In a study of the impact of district

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<sup>65</sup> O’Keeffe, [15]-[18].

<sup>66</sup> O’Keeffe, [14], [22].

<sup>67</sup> O’Keeffe, [23]-[24].

<sup>68</sup> O’Keeffe, [25]-[27].

<sup>69</sup> See, for example, Department of Defence, [ADF Pay and Conditions Manual](#), Annexure 4.4A.

<sup>70</sup> O’Keeffe, [20]-21].

<sup>71</sup> *Annual Wage Review 2009-10* [2010] FWAFFB 4000, [275]; *Annual Wage Review 2011-2012* [2012] FWAFFB 5000, [210].



allowances on the employment choices of Queensland public school teachers, the allowances were shown to have a demonstrable, positive impact on teacher retention, mobility and attraction in non-metropolitan areas.<sup>72</sup>

108. The isolation described by the lay witnesses is reflective of significantly poorer social inclusion in the SDA Regions. Employees in the SDA Regions are required to spend more time away from their family and community when seeking medical treatment, lack opportunities for learning and career advancement, and have fewer and more expensive options for travel.
109. District allowances, being primarily directed to the disabilities experienced by workers, can also address the poorer social inclusion outcomes caused by isolation.
110. For example, low paid workers are more likely to be able to take time off work if they or their family are required to travel for medical attention.
111. District allowances can also offer low paid workers a greater chance to save in order to fund educational opportunities or travel.

(f) the likely impact on business

112. The SDA accepts that its proposal would increase costs for employers in the industries covered by the Relevant Awards in the SDA Regions. However, the impact is likely to be marginal.
113. District allowances have been a permanent feature of the economic landscape in the SDA Regions, as well as other remote areas like Broken Hill, for much of the last century.
114. The SDA is not aware of any evidence that district allowances have impacted negatively upon businesses to any measurable degree. The regulatory burden on businesses will be minimal given the ease with which the district allowance can be calculated, and the familiarity of employers in the SDA Regions with the former WA system of district allowances.
115. There is also evidence that district allowances can incentivise workers to move to, and remain in, the SDA Regions.<sup>73</sup> The retention of employees over the long-term leads to better-skilled and more experienced employees, which would in turn create productivity benefits for employers in the SDA Regions. Any increased costs to employers are therefore likely to be set off by productivity benefits.

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<sup>72</sup> See generally Queensland Teachers Report.

<sup>73</sup> See generally Queensland Teachers Report.

(g) the need to ensure a simple, easy to understand, stable and sustainable system

116. The SDA's proposal is simple and easy to understand.
117. It identifies the areas covered by reference to local government areas, which are likely to be well-known to businesses.
118. It maintains a consistent rate across the SDA Regions and Broken Hill, thereby requiring employers and employees to simply understand the quantum of the rate and the limited areas to which it applies.
119. The SDA's Proposal is additionally stable and sustainable.
120. By expressing the allowance as a percentage of the standard rate, the FWC is not required to revisit the fixation of the rate on a regular basis. Instead, the district allowance will vary in accordance with changes to the standard rate.
121. In the event that there is a substantial change to the disabilities experienced by workers in the SDA Regions, then it is open to a relevant party to put a merits case to the FWC seeking a variation to the rate.
122. However, the SDA notes that changes to the rates of district allowances have only previously been necessitated after the passage of several decades. There is therefore no reason to believe that the inclusion of district allowances would be less stable than most allowances included in modern awards.

(h) the likely impact on the national economy

123. The impact of the SDA's proposal on the national economy is likely to be negligible.
124. The SDA's proposal is modest both in terms of the quantum of the rate and the area to which it applies. The rate is less than half of the increased cost of living in the SDA Regions, and would apply only in the sparsely populated regions that experience the most significant level of relative disadvantage.
125. The only likely impact on the national economy would be the partial easing of the economic inequalities that exist between the living conditions of workers in the SDA Regions on the one hand, and workers in the metropolitan and regional centres on the other.

Critical to a fair and relevant safety net

126. The disabilities that are experienced by workers, and particularly low paid workers, in the SDA Regions produces a significant reduction in real terms of the value of the minimum terms and conditions prescribed in the Relevant Awards. That has the effect

of substantially eroding the safety net for those employees such that they no longer fairly benefit from it.

127. Furthermore, the materials produced by the SDA constitute very recent evidence that the disabilities associated with working in the SDA Regions persist and remain substantial. The SDA submits that district allowances enable the safety net to be “relevant” in the sense that it addresses the particular disabilities faced by workers in the SDA Regions.
128. In the circumstances, and having regard to the factors discussed above, the SDA’s proposal is plainly necessary to ensure a fair and relevant safety net for employees in the SDA Regions.

**J. Fixation of district allowances**

129. If the FWC is satisfied that the inclusion of district allowances in the SDA Regions are appropriate, then the questions arises as to the appropriate rate of the allowance.
130. The SDA has proposed that the allowance be paid as 4.28% of the standard rate in each of the Relevant Awards.
131. Industrial tribunals have consistently faced two challenges in designing systems of district allowances: first, how to fix the rate of district allowances; and, second, whether and how to vary the rate between different locations in view of the variations that occur across regions in terms of cost of living, effects of climate, and level of isolation.

Method of fixing the rate

132. The SDA’s proposal expresses the district allowance as 4.28% of the standard rate in each of the Relevant Awards.
133. The fixation of rates for district allowances has been a difficulty for industrial tribunals since their advent. In the *1958 Decision*, Neville J reviewed earlier decisions establishing district allowances in WA, commenting at 685 as follows:

*Moreover the Court made no attempt to show what parts of the allowances prescribed were allocated amongst the various factors that have to be considered in any fixation of a district allowance, in deed it seems extremely doubtful whether anything but cost of living was taken into account.*

134. His Honour proceeded to undertake a relatively complex exercise that weighed cost of living, climate and isolation.
135. Given the imprecise and qualitative nature of calculating district allowances, the SDA submits that it would be essentially impossible, or at least highly resource intensive, to

calculate a figure for each location that exactly accounts for the disabilities caused by cost of living, climate and isolation.

136. In the circumstances, there is likely to be an acceptable range within which the rate may fall for each location. It is not necessary for the rate of a district allowance to be precisely or quantitatively determined.<sup>74</sup>
137. The rate of 4.28% reflects the rate already adopted by the FWC in relation to the Broken Hill allowance. The ACTU has explained previously to the FWC that the rate of 4.28% in the Broken Hill allowance:<sup>75</sup>

*reflects the district allowance of \$12.40 per week which was in force in Broken Hill at the time that the relevant modern awards commenced operation. It also reflects the additional week of annual leave that applied in Broken Hill at the time that the modern awards commenced operation.*

138. Similarly, the rate of 4.28% proposed by the SDA falls within the range of location allowances that are awarded by the WAIRC for work in the SDA Regions. So much is clear from Annexure SDA-3.
139. Annexure SDA-3 is a table summarising the location allowance paid to workers under the General Order organized by the local government areas covered by the SDA's proposal.
140. To enable comparison with the Broken Hill allowance, the table converts the dollar value into a percentage of the minimum wage of a "Storeman Operator Grade II" under the Shop and Warehouse (Wholesale and Retail Establishments) State Award 1977. This SDA considers this classification to be most comparable to Retail Employee Level 4 in the General Retail Award 2010.
141. The SDA submits that a rate of 4.28% would partially address the disadvantages experienced by workers in the SDA Regions to an acceptable minimum level, while not being generous, having regard to:
- (a) to the magnitude of the cost of living disadvantage experienced by workers in the SDA Regions;
  - (b) the purpose of the district allowances in partially compensating for additional time for travel, such as for medical appointments; and
  - (c) consistency with the Broken Hill allowance.

<sup>74</sup> 1980 Decision, 1152.

<sup>75</sup> Australian Council of Trade Unions (1 August 2014), [Submissions re Transitional Provisions](#), [96].

Whether to vary the rate between regions

142. The second issue concerns whether (and, if so, how) to vary rate of district allowances as between different locations.<sup>76</sup>
143. The SDA's proposed way of identifying the SDA Regions is consistent with the language of the Broken Hill allowance, which refers to the County of Yancowinna. The County of Yancowinna is a Cadastral division of New South Wales that includes both Broken Hill and Silverton.
144. While there is no system of Cadastral divisions in WA, all of its territory is covered by incorporated local government areas. Local government areas in WA are well-defined, and likely to be well-known to employers and employees as both residents and ratepayers. It is therefore appropriate to use local government areas as the basic unit for identifying the application of district allowances in WA.
145. The SDA accepts that by applying a uniform rate across the SDA Regions there will be some inconsistencies in the benefit gained by workers in different locations. For example, the rate of 4.28% accounts for half of the increased cost of living in the Gascoyne, while accounting for a third in the Kimberley.
146. However, the SDA submits that there is no unfairness to this approach given that the SDA's proposal is designed to achieve a minimum safety net in response to qualitative and variable factors, while preserving simplicity and comprehensibility to the maximum degree.
147. The FWC can be satisfied, based on the historical approach to fixing district allowances in the SDA Regions, and the evidence before it, that a rate of 4.28% applied uniformly across the SDA Regions and Broken Hill would achieve the modern awards objective.

Further research, if required

148. In the event that the FWC is satisfied that district allowances are necessary to achieve the modern awards objective, but seeks a more precise method of fixing and varying the rate, it would be appropriate for the FWC to seek further assistance from the parties or consider commissioning research at that time.

**K. Conclusion**

149. District allowances have been an established and stable part of the industrial relations safety net in the SDA Regions for most of the last century. Their removal during the

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<sup>76</sup> 1958 *Decision*, 690; 1980 *Decision*, 1148.

award modernisation and transitional processes due to the FWC's misapprehension about the scope of s 154(1)(b) has caused employees to experience a substantial, real decline in the safety net.

150. The materials relied on by the SDA demonstrate that the disabilities associated with working in the SDA Regions in terms of cost of living, climate and isolation that led to the formation and maintenance of district allowances in the state system remain real and substantial.
151. A fair and relevant safety net therefore requires the reinstatement of an appropriate system of district allowances in the SDA Regions.
152. The FWC should accordingly vary the Relevant Awards as proposed by the SDA.



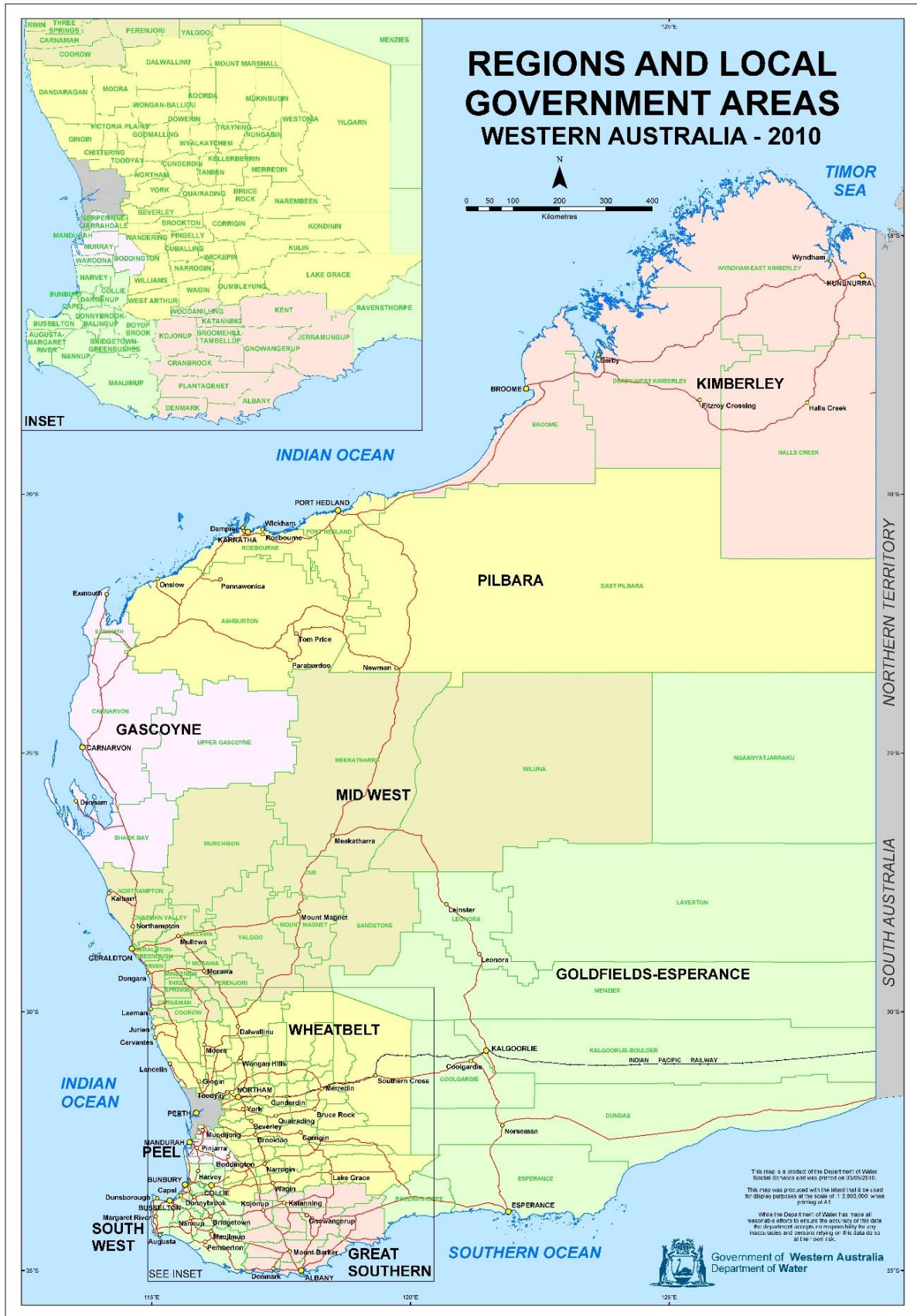
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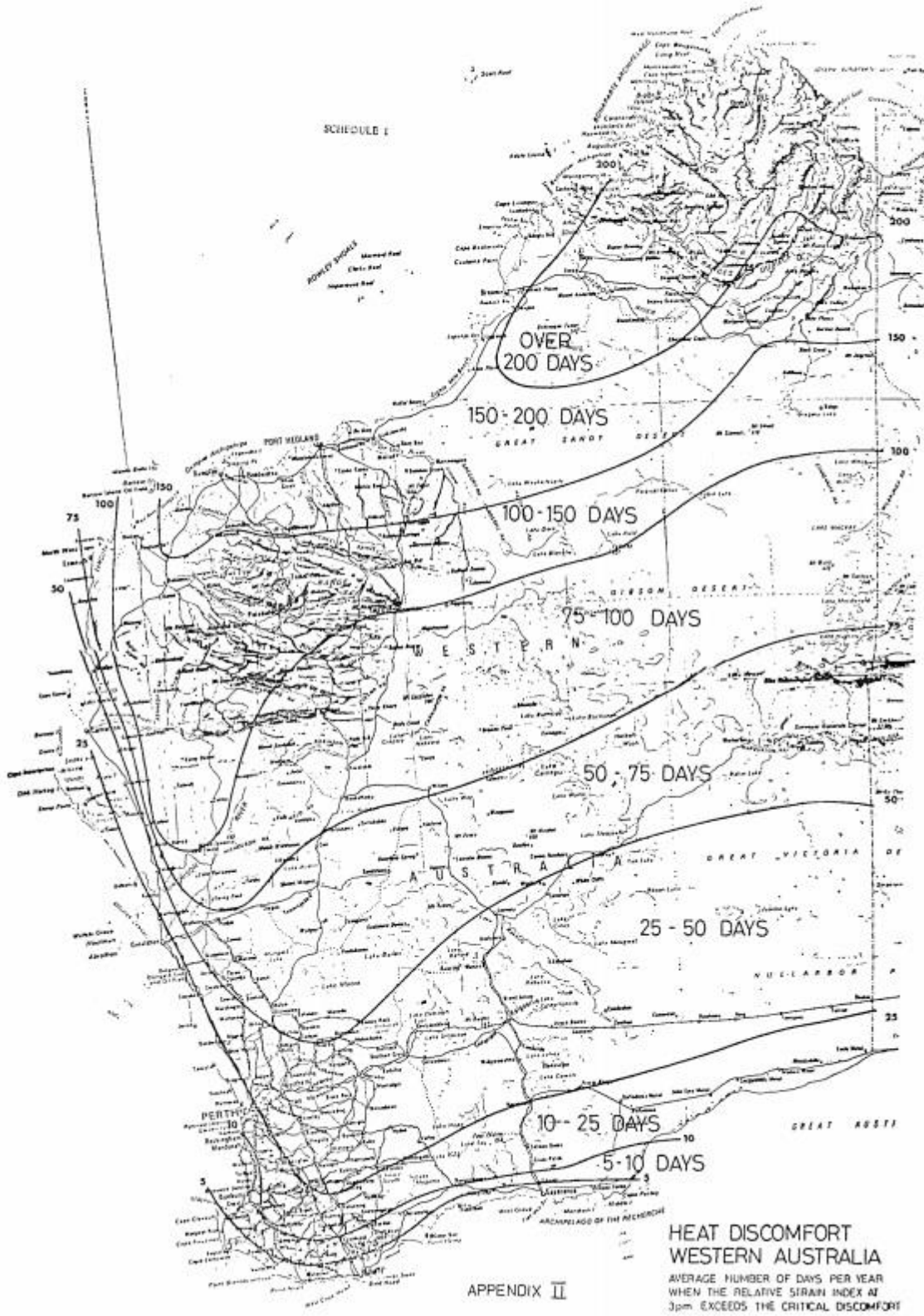
Solicitors for the SDA

**Dated:** 16 February 2018

ANNEXURE SDA-1



ANNEXURE SDA-2





**ANNEXURE SDA-3**

<b>Local government area</b>	<b>Location</b>	<b>Allowance (\$/week)</b>	<b>Standard rate (%)</b>
<b>KIMBERLEY</b>			
Shire of Broome	Broome	34.30	4.35
Shire of Derby-West Kimberley	Derby	35.70	4.53
	Fitzroy Crossing	43.30	5.49
Shire of Halls Creek	Halls Creek	50.00	6.34
Shire of Wyndham-East Kimberley	Kununurra	57.00	7.23
	Wyndham	53.40	6.77
<b>PILBARA</b>			
Shire of Ashburton	Onslow	37.10	4.70
	Pannawonica	27.80	3.52
	Paraburdoo	27.70	3.51
	Tom Price	27.70	3.51
Shire of East Pilbara	Marble Bar	55.20	7.00
	Newman	20.50	2.60
	Nullagine	55.10	6.99
	Telfer	50.80	6.44
City of Karratha	Dampier	29.90	3.79
	Karratha	35.90	4.55
	Roebourne	41.30	5.24
	Whim Creek	35.50	4.50
	Wickham	34.30	4.35
Town of Port Hedland	Port Hedland	29.70	3.77

<b>GASCOYNE</b>			
Shire of Carnarvon	Carnarvon	17.60	2.23
Shire of Exmouth	Exmouth	31.30	3.97
	Learmonth	31.30	3.97
Shire of Shark Bay	Denham	17.60	2.23
	Shark Bay	17.60	2.23

Fair Work Commission

*Fair Work Act 2009*

Part 2-3, Div 4 – 4 yearly review of modern awards

**AM2014/190 – DISTRICT ALLOWANCES**

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**WITNESS STATEMENT OF FOON MENG CHENG**

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I, Foon Meng Cheng, of [REDACTED], say as follows:

**Background**

1. I am 56 years old.
2. I moved to Hedland from Singapore in 1987.
3. Since about August 2003, I have been employed by K-Mart as a Customer Assistant in the apparel department at the South Hedland Shopping Centre.
4. I currently work part-time hours of about 60 hours per fortnight. I am paid a base rate of \$21.45 per hour.

**Cost of living**

5. I live with my retired husband in a 3 bedroom, 1 bathroom house. We own the house outright, and paid about \$1,228.00 in local government rates last year.
6. I have reviewed recent utility bills, and I estimate that we spend on average the following:
  - (a) \$3,300.00 per year on electricity;

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Filed on behalf of (name & role of party)	SDA, Applicant Union		
Prepared by (name of person/lawyer)	David Scaife		
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(include state and postcode)	Perth WA 6000		

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- (b) \$1,400.00 per year on water;
  - (c) \$840.00 per year on phone/internet;
  - (d) \$350.00 per year on gas.
7. An average weekly shop would cost about \$200.00.
  8. I go to Perth about three times a year, and I can always tell that the groceries in Hedland are more expensive.
  9. For example, bananas are often as much as \$5.00 per kg in Hedland.
  10. Sometimes when I go to Perth I see a lot of nice fruit at the supermarket, and I ask myself why our fruit is not that fresh.
  11. Fruit is often close to going off and not so good in Hedland. I assume that's because it spends a lot of time being driven up here in the trucks.
  12. I would spend about \$150.00 per fortnight on fuel.
  13. I am aware from talking to my friends and co-workers that other people who live in Hedland are paid a housing allowance, air conditional allowance or flight allowance as part of their employment to compensate them for living in Hedland.

### **Climate**

14. It is very hot in Hedland for most of the year. In summer it is usually above 40 degrees.
15. The very hot weather causes difficulties even at work. The air conditioning at work has to overwork because it's so hot outside, which means that it is not cool enough inside. The air conditioning also sometimes just shuts down.
16. I would say that there are at least a few days each month where it is hot even on the shop floor.
17. I also notice the heat when I am carrying stock from the loading zone into the store. It gets very hot near the back door most days.
18. At home, we sometimes have the air conditioning on for 24 hours a day, especially when the temperature is about 38 degrees.
19. Our electricity bill is usually substantially more during the summer months compared to winter months because of the air conditioning.
20. We also have a cyclone season here in Hedland, which even if they don't hit us, pass close by. I would say that there are about three cyclones each season, though sometimes they don't get close to us.

21. Hedland always gets a lot of rain during the cyclone season, but is very dry the rest of the year.
22. Even when cyclones aren't close to Hedland, we can get so much rain that it floods and the town is cut off. I would say that happens every two to three years.
23. I remember that about ten years ago, Cyclone George hit Hedland really badly. I had no water or electricity for about a week. I had to chuck out freezer food and wait for the power to be reconnected.
24. About two to three years ago, a cyclone caused flooding around Hedland. There was about three days when the shops were out of most fresh food because the trucks couldn't get in to deliver it.
25. There are also a lot of empty shelves at the shops before the cyclone because people buy things, especially canned food, in preparation.

### **Isolation**

26. For minor medical problems, it's a 15 minute drive to the hospital, but for anything more serious you have to fly to Perth. You also have to go to Perth if you need scans done like an MRI.
27. About four years ago, my husband started getting double vision in his eyes.
28. My husband and I tried to find treatment in Hedland by going to our GP, but nothing was working and there is no eye specialist in Hedland, so we had to get help in Perth.
29. At first, we were travelling to Perth two to three times per month in order to get blood tests and other tests, but nothing was ever found.
30. After about two years and more tests, my husband was diagnosed with IgG4 that affects his eyes by Dr Stephen Sally, Ophthalmologist at Royal Perth Hospital.
31. In October 2016, my husband had an operation that helped with his condition, and we now only have to travel to Perth about once a year for check ups.
32. Perth is about 1,700km away from Hedland, so we would fly down for each trip. In my experience, the average cost of a flight is about \$300.00 per person one way.
33. We would stay at motels when we were in Perth for my husband's appointments. The cost of a motel varies, depending on the season, from about \$89.00 per night to about \$200.00 per night.

34. I remember one time we flew down to Perth and had to stay for a few weeks waiting for different appointments. After about three weeks, the motel informed us that we couldn't stay anymore because they were fully booked. We didn't have anywhere else to stay, so we had to reschedule an appointment, so we could go home to Hedland and then come back another time.
35. Living in Hedland also limits our choices in terms of shopping and services.
36. There are a couple of furniture shops in Hedland, including a second hand store. If you want furniture that isn't in stock in Hedland, then you have to pay transport fees for it to be shipped from Perth.
37. About five years ago, I ordered a sofa and dining table set, and had to pay over \$100.00 just for shipping fees.
38. For clothes shopping, we really only have K-Mart, except for a few small stores. I make a point when I'm in Perth to buy a lot of clothes at different stores while I'm there.
39. I also wear glasses, and we only have an OPSM store in Hedland. I go there if I have to, but I prefer to go to Specsavers when I'm in Perth because it's much cheaper.
40. The community facilities in Hedland are okay. We have a gym and one cinema.
41. For public transport, I think we have only one bus that makes maybe one or two trips a day.
42. We also have a public library, but it's small and there's not much there. I have to get them to order in Chinese books for me to read.
43. The internet connection in Hedland is not very good. You can sometimes watch movies over the internet, but then it will suddenly cut off and you can't continue watching it.

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Foon Meng Chen

**Date:**

Fair Work Commission

*Fair Work Act 2009*

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**AM2014/190 – DISTRICT ALLOWANCES**

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**WITNESS STATEMENT OF MAKERE (MANU) BROWN**

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I, Makere (Manu) Brown, of [REDACTED], say as follows:

**Background**

1. I am 67 years old.
2. I moved to Hedland from New Zealand about five years ago.
3. Since about May 2017, I have been employed by Woolworths on a part-time contract for 15 hours per week. I am paid a base rate of \$22.48 per hour.

**Cost of living**

4. I live with my partner, who works a casual job, in a 5 bedroom, 2 bathroom house. The house is owned by my partner, and has a massive mortgage on it.
5. My partner and I split the bills so that most of his pay goes toward the big bills, like the mortgage and the electricity, and my pay goes toward our daily living expenses.
6. I would say that an average weekly shop costs about \$300.00 per week, even though sometimes I don't make that much. Most of my pay goes on food and personal expenses each week.

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Filed on behalf of (name & role of party)	SDA, Applicant Union		
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7. All of the products in the shops here are more expensive than they are in Perth, including meat, vegetables, toiletries, and cleaning products.
8. Meat is probably the biggest part of the cost of the weekly shop. I probably spend about \$150.00 per week just on meat.
9. Fruit and vegetables are also expensive. Some fruits, like nectarines and peaches, we don't get very often. Even apples are expensive, even though they are probably four days old by the time they get here.
10. I can't leave any fruit or vegetables out on the bench for longer than a day or two because it goes rotten so quickly. Nothing is fresh by the time it gets here.
11. I have a 2006 Toyota Corolla, which is very fuel efficient. I pay about \$50.00 for fuel every three weeks.
12. The local government rates for last year were \$3,013.00.
13. My phone costs me about \$80.00 per month on a contract.

### **Climate**

14. The climate here is hot. It's always hot, even in winter. Hot and humid.
15. Winter is a little cooler than summer, maybe for about 6 weeks, just a tad. It's still around 30 degree during the day, though, which is quite cool for us.
16. I have the air conditioning on at home a lot when it is hot, but I go around turning it off in all the empty rooms.
17. This still means that our electricity bill is a lot more in summer. Our last bill was about \$900.00 for about 6 weeks, but they have been up to \$1,300.00 in the past.
18. The air conditioning at work is generally quite good, but it can't cope with the humidity. I am constantly having to wipe down any glass surfaces because they get so wet with condensation.
19. Fire drills at work are also very hot. We've had two since I started at Woolworths. Last time, we had to be outside in the heat, either sitting on the ground or standing around, waiting for an hour for the fire truck to come.
20. We also get cyclones that affect Hedland. The last two cyclone warnings haven't come to much, but they've left a mess around town in the past.

### **Isolation**

21. When we have medical problems other than minor problems, we have to go to Perth.



22. My partner has heart problems, which means that he sometimes has to travel to Perth for appointments. Even when he can see a specialist in Hedland, he usually has to wait about three months for the specialist to visit.
23. I just the past year, my partner has had to go to Perth three times for medical attention.
24. His last medical problem was caused by dropping some hot coffee on his foot. He ended up having to go to the burns unit of a hospital in Perth and was there for three weeks. Because he' a casual, we had to go without his pay for that time.
25. It costs about \$600.00 return to fly to Perth from here. We can't afford for both of us to go, so we spend that time apart.
26. I am generally in good health, though I have rheumatoid arthritis. I have to wait for a rheumatologist to come to Hedland about once every six months for an appointment.
27. My granddaughter, who is 19 years old, is very bright and did well at school. I know that she would like to study drama at university.
28. My granddaughter is eligible to go to university, but there are no university facilities here. It's just unaffordable for her to move to Perth because of the moving costs and the work that she would have to do to pay for her accommodation and other living costs.
29. There are times when the town gets cut off by floods, but it is more common for the town to be cut off by accidents on the road.
30. In early January 2018, car accidents closed both the Great Northern Highway and the Northwest Coastal Highway.
31. The delivery trucks couldn't get through for about two days, which meant that there wasn't a lot of stock on the shelves. The fresh food that was on the shelves was close to rotten by the time the new deliveries arrived.
32. I have to deal with a lot of extra complaints from customers during these times because we are running low on stock.
33. I go to Perth about three times a year, mainly to visit family. In the past 6 months, I've had three funerals, two in Perth and one in New Zealand, that I would have liked to attend, but I could only afford to go to one.
34. When I'm in Perth the main thing I also do is clothes shopping.

35. We only have K-Mart in Hedland. I think there's a jeans shop and a shirt shop for men, but they are pretty limited. Everyone wears the same thing from K-Mart, but you don't always want to be wearing the same thing as everyone else, especially not for something nice.
36. My partner and I would like to buy things from other shops, but we don't have a cheap way of getting anything back to Hedland that we can't carry. For example, my partner would like to go to Bunnings because the hardware shop here never has what you want or is out of stock.
37. There is public transport, but the services are few and far between. I wouldn't be able to use the bus, anyway, because I finish work at 9.15pm. I also think the bus is too dangerous at night time.
38. Instead, I drive to work, which is about 20km each way. I usually work three days a week, which is 120km of driving to and from work each week.

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Makere (Manu) Brown

**Date:**

Fair Work Commission

*Fair Work Act 2009*

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**AM2014/190 – DISTRICT ALLOWANCES**

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**WITNESS STATEMENT OF DAVID CARTER**

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I, David Carter, of [REDACTED] say as follows:

**Background**

1. I am 54 years old.
2. I am employed by Woolworths as the Meat Manager. Previously I worked in the fruit and vegetable department, as well as being the bakehouse manager.
3. I am paid about \$22.00 per hour.
4. I have lived in Carnarvon since 2000. Previously, I lived in an Aboriginal community where I worked as a TAFE lecturer.

**Cost of Living**

5. I live by myself in a 3 bedroom, 1 bathroom house. My mortgage repayments are \$600 per month.
6. My council rates are about \$3,000 per year, maybe more. It's a lot of money and the cost is constantly going up.

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Filed on behalf of (name & role of party)	SDA, Applicant Union		
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<b>Address for service</b> (include state and postcode)	Suite 2, 82 Beaufort Street Perth WA 6000		

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7. I spend approximately \$100 per week on groceries.
8. I spend \$1,200 a month on my landline and internet. I only use the line for my internet use, so I keep the landline phone unplugged. If I plugged the landline phone in and used it for standard calls my bill would go through the roof.
9. I have a Telstra, prepaid mobile phone. I spend about \$30 every four weeks on it. I try to use it after 6pm because I get free calls.
10. The fresh produce isn't the same quality as it is in Perth. I think a lot of it is because of the way it is transported. Even though some of the produce is grown near Carnarvon, it gets sent to Perth then back to Carnarvon.
11. Produce like stone fruit, grapes, and tomatoes don't last long. They start to go soft very quickly.
12. Fresh produce is probably the worst when looking at the difference in quality. There is definitely a drop in quality up here.
13. Petrol and gas are more expensive than in Perth.
14. Gas is \$150 per bottle, which I use for my cooking and hot water. I will use a bottle of gas every 6 months and have to pay upfront when I order more. Sometimes the supplier runs out of gas and can't deliver it, so you just have to wait.
15. Clothes are expensive at the local stores. You have to pay \$30 for a t-shirt and \$10 for a pair of socks. Your options are limited here so you have to buy what you can get, but it's not cheap.
16. When shopping online the overall cost includes a lot of things, including freight. I can't buy a TV from a store for the same price as it would be in Perth because I would have to pay freight for it to be brought to Carnarvon.

## **Climate**

17. The weather in Carnarvon is very humid. It's a tropical climate and the temperature can get to the mid-30s. The humidity is the issue; it's sticky.
18. My electricity bill spikes in summer because you have to have the air-conditioning on. The heat and humidity gets so bad sometimes you have to keep your air-conditioning on overnight, otherwise it's too difficult to sleep.
19. There are times when the air-conditioning is on 24 hours a day, 7 days a week. You spend all your time inside because it's the coolest place to be.

20. A few years ago, there was a cyclone which caused Carnarvon to be surrounded by flood waters. The power and phone lines were cut off. The roads were cut off and everything had to come in by plane. When things started to arrive into town, there was a mad panic and everyone rushed to buy the items.
21. If there is a big storm forecast, people start to panic and buy lots of groceries. That can cause shortages, especially because we don't have speciality shops.

### **Isolation**

22. There isn't the same variety of places to go or things to do in Carnarvon as there is in Perth.
23. There aren't many places you can go in Carnarvon if you want to go out. There are a couple of pubs, but I'm not interested in drinking at the pub.
24. I have noticed most people have Foxtel or iiNet TV because, for the most part, there isn't much else to do. There's no squash court or ten pin bowling.
25. The cinema in Carnarvon shows movies, but the movies come out a lot later than they do in Perth.
26. There's a cricket and football club, but they are hard to get into because so many people want to play.
27. Mainly, once you finish high school there isn't a lot for you to do in Carnarvon.
28. I have a drivers' licence but no car at the moment. I can walk or ride a bike around town. Otherwise, it costs about \$10 for a taxi.
29. A free bus service picks the kids up for school, but besides that there is no other public transport.
30. There is a lack of job opportunities in Carnarvon. There aren't a lot of options for work.
31. Carnarvon used to have a local paper but that closed down.
32. Studying is another limiting factor here. There is a TAFE in town, but the courses you can take are limited. If they don't offer it here, then you can't study it. The courses that are available are based on what kind of lecturers they are able to employ.
33. Specialised courses through TAFE aren't available in Carnarvon. It's a push to even be able to access them online.

34. I started a basic computer course about 6 or 7 years ago at the local TAFE, but they had to stop the course because the lecturer left town and it wasn't available online. I completed a couple of modules before the lecturer left, but I didn't receive any accreditation for it because I didn't get to complete anything.
35. The closest main town would be Geraldton, which is 490km away from Carnarvon. It has all the main stuff that the cities have, all the Perth shops. Otherwise, I can head north to Karratha, which has similar stores.
36. If you want to buy anything large, like furniture for the house, you have to pay freight for it be brought back up to Carnarvon unless you have a trailer that fits it.
37. The lack of variety and costs of freight makes it inconvenient. For example, if I wanted a new lounge suite, there is only one place in Carnarvon that sells lounge suites. If you don't like any of their furniture you have to order it from somewhere else and pay for the freight on top of the cost.
38. The internet I have is ADSL2. Apparently, there is a damaged cable somewhere so the internet has been slow the last week or two. It keeps dropping in and out.
39. I stream Fetch TV over the internet. It can get pixelated sometimes, but not often. It does slow down quite a lot though when you're streaming movies or TV.
40. The lack of variety in the stores means that if one of the stores doesn't have something you have to wait for it to be brought in from somewhere else.
41. Carnarvon has a hospital and a couple of doctor's surgeries. If you needed to have an operation you would need to go to Perth.
42. Elderly people living in Carnarvon don't have access to full-time care facilities.
43. I have been waiting to see a dentist, but there isn't one in Carnarvon at the moment. There is one that comes though every few weeks or so.

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David Carter

**Date:**

Fair Work Commission

*Fair Work Act 2009*

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**AM2014/190 – DISTRICT ALLOWANCES**

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**WITNESS STATEMENT OF GILLIAN NOLAN**

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I, Gillian Nolan, of [REDACTED] say as follows:

**Background**

1. I am 59 years old.
2. Since December 2001, I have been employed by Woolworths as a Customer Service team member on a part-time contract.
3. I work 10 hours per week. I am paid a base rate of \$22.00 per hour.

**Cost of living**

4. My husband and I live in our own home. We pay \$2,600 per month in mortgage repayments.
5. I have lived in my current house in Karratha for about 12 years.
6. Through my husband's employment with Rio Tinto we receive an allowance towards our electricity bill. In the winter months we can go over the Rio Tinto allowance.
7. We pay approximately \$500 per month towards our mobile phone and internet bills.

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Filed on behalf of (name & role of party)	SDA, Applicant Union		
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8. From my experience talking to friends, most of the big employers in Karratha offer an air-conditioning allowance for their employees.
9. I know from my husband that if Rio Tinto employees rent a house in Karratha, then Rio Tinto usually pay about \$40 a week for rent. The employees also get free electricity and an air-conditioning allowance as part of their employment.
10. My husband and I spent around \$300 on our weekly shop, including my husband's cigarettes and occasional alcohol.
11. I know you can get groceries cheaper in the city at markets than what I pay in Karratha. I have seen loose potatoes advertised for 99c per kilo in Perth; they are \$3 per kilo in Karratha.
12. I think meat is more expensive in Karratha.
13. The quality of groceries in Karratha is poor compared to the groceries in Perth. My groceries don't stay fresh as long as groceries I have bought in Perth.
14. The weather and quality of the produce means I can't leave groceries out on the bench and use them as I need them. Instead, I have to store them in the fridge.
15. At my store, we once we had to send milk back to Perth because the truck had driven up at the wrong temperature and the milk went off.
16. I pay council rates for the Karratha property and a similar type of property located just outside of Mackay. The rates for the Karratha property are about \$2,700, but the Mackay property's rates were only around \$1,100.
17. My husband complains to me about the amount he has to pay for freight to get his car parts delivered to Karratha. He said it nearly doubles the costs of what he is buying. However, I don't do any online ordering.
18. The taxi fees in Karratha are phenomenal. A trip from my house to town, which is less than 2 kilometres, would cost about \$10.
19. There is only one bus for public transport this year. It starts in Dampier and does a circuit of Karratha, Roebourne, Wickham, and Point Samson. The bus runs every 2 hours or so. It is run by the Shire, but I think another company has a contract for it.
20. This is one of the reasons why I prefer to drive to work. I drive a diesel car. The price of diesel in Karratha is currently 144.5c per litre.
21. My husband and I get two free flights a year from Rio Tinto as part of his employment.



**Climate**

22. Karratha gets very hot in summer. Sometimes I experience heat stress during the summer.
23. At least once a year we get some sort of extreme weather, like cyclones. Sometimes that means the Shire amenities will be closed until the weather is better.
24. My house has split system air-conditioners and my husband received an allowance of air-conditioning through Rio Tinto. We don't use our air-conditioner 24/7, so we don't usually go over our allowance.
25. I haven't had any problems with the air conditioning at work.
26. I know that the K-Mart store in Karratha has had problems with its air conditioning because I have been shopping there when it isn't working. It's horrible to go in there when the air-conditioning isn't working properly.

**Isolation**

27. The medical facilities in Karratha are poor.
28. I had an operation on my right hand due to carpal tunnel which was done in Karratha. Before I could have the operation, I had to travel to Perth twice to see doctors just to confirm I had carpal tunnel.
29. I know several pregnant ladies in Karratha who have asked to have their baby here. They have been told they have to go to the hospital in Hedland as there is no one in Karratha who can deliver their baby.
30. I think Karratha Hospital is getting an MRI machine in the future, but at the moment people have to travel to Perth for one.
31. A mate of mine has incurable cancer and has to travel to Perth once a month for check-ups and similar appointments.
32. The cost of a return flight to Perth is around \$500 minimum. The local paper recently said that Qantas have advertised that flights to Perth will be cheaper for local residents, but it didn't say how much they would cost.
33. A return flight to South Australia or Queensland would be about \$1,100.
34. I usually visit my relatives in other states twice a year. Last year I was away for seven weeks. I went to Queensland once and visited my elderly mother in South Australia once.

35. A lot of people up here can't save the money to pay for airfares. The Greyhound bus, which is the alternative to flying, only runs about once a week now.
36. There are some things to do and see in Karratha, but once you've seen them, you've seen everything. They hold events in town which aren't too bad, but it gets swamped by people because events are few and far between up here.
37. There are some places in town you don't want to go to because it's too hot. If you go to any outdoor event, or something like that, you would need to sit down and get some shade after about 10 minutes.
38. On the news, they ask you not to go to the emergency department for things like a cold or a stubbed toe. Up here, you have to go to the emergency department because it costs you up to \$90.00 to go to the GP. There's no bulk billing or anything like that; I don't even think there's an after-hours GP.
39. Most of the sports played up here have to be played in the evenings because of the extreme weather.

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Gillian Nolan

**Date:**

Fair Work Commission

*Fair Work Act 2009*

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**AM2014/190 – DISTRICT ALLOWANCES**

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**WITNESS STATEMENT OF MARITES GILTRAP**

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I, Marites Giltrap, of [REDACTED] say as follows:

**Background**

1. I am 49 years old.
2. I initially moved to South Hedland in 2005. Due to my husband's work, I have moved between South Hedland, Mandurah, and Alice Springs. I returned to South Hedland in 2014.
3. I have worked since 2006 for McDonald's in the South Hedland and Mandurah stores.
4. I am currently employed as a full-time kitchen hand in the South Hedland store, working 38 hours per week. I am paid a base rate of \$21.54 per hour.

**Cost of Living**

5. I live in 3-bedroom, 1-bathroom rental property with my husband. I pay \$290 a week in rent.

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Filed on behalf of (name & role of party)	SDA, Applicant Union
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6. We previously lived in a caravan, but it was damaged in a storm. My husband got a job with Linfox and they provide rental assistance. That meant we were able to move into our current rental property. I'm not sure what amount my husband receives for his rental allowance.
7. My husband and I split the bills. I pay for the food and my husband pays for the utility bills and rent as he has a higher income.
8. I know that our electricity bill goes up in summer because we have the air-conditioning on a lot. I will turn the air-conditioning on in every room when I get home and it stays on all night.
9. I will usually spend about \$100 to \$150 a week on groceries for my husband and me.
10. Grocery shopping is more expensive in South Hedland than it was in Mandurah.
11. The quality of the groceries is mostly the same, except for fruit and vegetables. Fruit and vegetables don't last as long as they did in Mandurah. They just aren't as fresh up here.
12. Meat is a lot more expensive in South Hedland compared to Mandurah. It is one of the main cost differences that I have noticed when doing the grocery shopping.
13. Petrol is expensive in South Hedland. At the moment, petrol is around \$1.40 per litre, but it is always going up in price.
14. Medical treatment is expensive. I had to have physiotherapy and it cost me \$70 per session.
15. Depending on which doctor's surgery you go to, you have to pay between \$70 to \$90 to see a doctor.

### **Climate**

16. It gets very hot and humid in South Hedland. In the summer, when it gets to 40 degrees and more, it gets too hot.
17. I'm always drinking a lot of water because of the heat.
18. You get exhausted from the heat; it wears you out while you are working.
19. The air-conditioning at work doesn't seem to be able to handle the heat. It is okay in winter, but it gets very hot at work in summer. It's especially hard for me because I work in the kitchen. I get very hot when cooking on the grill in summer.

20. I have experienced cyclones while I have lived in South Hedland. Once, we lost power during a cyclone which was difficult because we couldn't use the air-conditioning.

### **Isolation**

21. I live close to work. It only takes me approximately 5 minutes to drive there.
22. There isn't much to do in South Hedland in your spare time. Usually on my days off I will just do housework.
23. My husband likes to do online shopping. A lot of items are easier to get online rather than in stores or he can't buy them in the stores in South Hedland.
24. South Hedland only has a K-Mart and a Coles. There are no other major stores.
25. Besides Port Hedland, the nearest major town is Karratha, which is over 200km away.
26. Visiting a doctor in South Hedland is very different to seeing one in the city. The doctors here aren't able to do all the same things doctors in the city can do.
27. I have issues with my spine and I can't receive treatment for it in South Hedland. Each time I need to see a specialist or have an MRI scan, I have to fly to Perth and see the doctors at Royal Perth Hospital.
28. My husband has issues with his shoulder and needs an operation. He has to fly to Perth each time he needs to see a doctor about his shoulder as there is no-one in South Hedland who can help him.

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Marites Giltrap

**Date:**

Fair Work Commission

*Fair Work Act 2009*

Part 2-3, Div 4 – 4 yearly review of modern awards

**AM2014/190 – DISTRICT ALLOWANCES**

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**WITNESS STATEMENT OF SUNSERAE CHURCHILL**

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I, Sunserae Churchill, of [REDACTED] say as follows:

**Background**

1. I am 39 years old.
2. I moved from Brisbane to Port Hedland two years ago.
3. Since November 2016, I have been employed by Woolworths on a part-time contract for 15 hours per week. I am paid a base rate of \$22.46 per hour.

**Cost of Living**

4. I live in a 3-bedroom, 1-bathroom rental property with my partner and our 11-year-old daughter.
5. I pay \$325 a week in rent, which is cheap for central Port Hedland, but the quality of the house we live in is poor. The rental property doesn't have a garage or carport. In Brisbane, you can pay the same amount in rent for a good quality 3 or 4-bedroom house with a carport.

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Filed on behalf of (name & role of party)	SDA, Applicant Union		
Prepared by (name of person/lawyer)	David Scaife		
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(include state and postcode)	Perth WA 6000		

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6. I use a pre-paid mobile phone which gives me unlimited calls and text messages. I spend about \$40 per month on my mobile.
7. I will usually spend around \$300 to \$400 per fortnight on the family groceries.
8. The quality of the produce isn't as good as in cities. The fresh bread in the stores comes in frozen or is baked in Perth and takes up to 3 days to be transported to Port Hedland.
9. A lot of the fruit and vegetables come in frozen, rather than being able to buy fresh produce.
10. Meat is quite expensive up here. There are no individual butchers, so you have to buy from the major chains. I think they tend to increase the prices compared to the city stores. The quality and size of the meat isn't as good for the price you are paying.
11. Utility bills are a lot more expensive in Port Hedland than in Brisbane. My latest electricity bill was \$600 for 2 months.
12. The electricity bill always goes up in summer because you have to use the air-conditioning regularly.
13. Online shopping is good to use for variety, but the cost of shipping the items to Port Hedland blows out the cost. I recently looked at buying a bicycle for my daughter. The bicycle was on special for \$70, but the cost to ship it to Port Hedland would have cost me \$75 on top so I didn't end up buying it.
14. Airfares to and from Port Hedland are expensive. It costs \$340 to fly one way from Perth to Port Hedland. For me and my daughter to fly one way to Brisbane it cost \$1,200.
15. The doctors in Port Hedland bulk bill for children, but the cost of medication is a lot more expensive here. In Brisbane, I was able to get a month's worth of a particular medication for \$5 under the Pharmaceutical Benefit Scheme. The same medication costs me \$42 per month in Port Hedland. I was told it was more expensive because there are less options for medication here than in the city.
16. My partner and I both receive an allowance for living in a remote location. My allowance is around 70 cents per shift. The allowance doesn't properly reflect the additional costs associated with living in Port Hedland.

### **Climate**

17. I love the weather in Port Hedland, even the heat.

18. However, even though my house is only about a 5-minute drive from my work, I choose to drive because it can be too hot to walk.
19. The heat makes it difficult to do activities up here. There are netball games, but they are only played 3 to 4 months of the year because otherwise it's too hot.
20. I haven't experienced any severe weather conditions like cyclones while I've lived in Port Hedland.

### **Isolation**

21. It has been challenging moving from Brisbane to Port Hedland. I struggled to adjust in the first few months.
22. In Brisbane, there is always somewhere to go and something to do. In Port Hedland there isn't really anywhere for you to go.
23. There are a few nice parks in Port Hedland, but the play equipment is tailored towards younger children. There is a lack of a lot of amenities that you would get in cities.
24. There isn't a lot to do for families unless you have younger children. There are very limited options for older children or girls.
25. The beaches are nice to look at but I wouldn't swim in them because we get a lot of sharks and crocodiles here.
26. The closest shopping centre is in South Hedland, which is about a 15 minute drive away. They have a Kmart, Coles and some small shops. If you want more variety than that you would have to travel 2.5 hours to Karratha.
27. I sometimes do online shopping but it takes a while for it to arrive. My mum sent me a package from Brisbane and it took 3 weeks to get here.
28. If there is an accident on the main highway it blocks access to Port Hedland. That can stop trucks being able to deliver stock. When this has happened, I have had to tell customers at Woolworths that certain stock is delayed.
29. There aren't many career opportunities in Port Hedland. I have worked in the legal field for 20 years, but I wasn't able to get a job in that field when I moved here. I ended up working for Woolworths because that was the only work available. I've had to take a significant drop in my salary because I couldn't keep working in law.
30. There are 2 schools in Port Hedland and 3 primary schools in South Hedland.



31. My daughter attends a private Catholic school in Port Hedland. The school is nice, but my daughter's level of schooling has dropped since we moved here. The school's NAPLAN results came back below the national average. I'm not happy with the level of schooling my daughter is receiving.
32. There is no hospital in Port Hedland, but there is one in South Hedland. You still need to fly to Perth if you need to see a specialist or require certain treatment.
33. I have recently had some medical issues and I've been told by the doctors I would be better off moving back to a city to receive treatment. Otherwise, I would need to fly back and forth between Perth and Port Hedland for treatment.
34. My partner is currently on workers' compensation. He has to fly to Perth each time he needs to see a specialist or receive chiropractic treatment. It seems as though his claim for workers' compensation has been drawn out because he has to continue to fly between Perth and Port Hedland for treatment.
35. The quality of the doctors in Port Hedland is poor. They are dismissive when you see them about an issue or illness.
36. There is a bus which goes between Port Hedland and South Hedland. I'm not sure how often it runs.
37. Taxis are rare in Port Hedland and if you do manage to get one they are expensive.

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Sunserae Churchill

**Date:**

Fair Work Commission

*Fair Work Act 2009*

Part 2-3, Div 4 – 4 yearly review of modern awards

**AM2014/190 – DISTRICT ALLOWANCES**

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**WITNESS STATEMENT OF SHANIA SIMONS**

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I, Shania Simons, of [REDACTED] say as follows:

**Background**

1. I am 20 years old.
2. I have lived in Broome for approximately 2 years. Previously, I lived in Derby with my family.
3. I have worked for Woolworths Petrol as a trainee Store Manager for 6 months. I had previously worked for Woolworths in Derby.
4. I am currently employed full-time, working a minimum of 40 hours per week. I am paid a base rate of about \$23.00 per hour.

**Cost of Living**

5. I live in a 3-bedroom, 1-bathroom complex unit with my partner and mother-in-law. Collectively, we pay \$400 a week in rent.
6. My partner, mother-in-law, and I split the bills. We each pay an even share of the bills.

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Filed on behalf of (name & role of party)	SDA, Applicant Union		
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Email	david.scaife@eurekalawyers.com.au		
<b>Address for service</b> (include state and postcode)	Suite 2, 82 Beaufort Street Perth WA 6000		

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7. The household electricity bill is around \$700 a month, of which I pay \$200. The electricity bill can skyrocket on hot days because we can't bear the heat. I try not to run the air-conditioner constantly as it is too expensive, but usually have it on in the middle of the day when the heat is worst.
8. I pay around \$40 every 3 months towards the water bill.
9. I use a pre-paid mobile phone which costs me \$60 a month. I spend \$150 a month for the internet connection.
10. The groceries are a lot more expensive in Broome. The most expensive groceries are meat, fruit and vegetables. Meat is always marked up a lot.
11. The fruit and vegetables, and bread, in Broome are never fresh. They have to be transported into town, which can take up to 3 days. There's nowhere you can go to buy fresh bread, and the fruit and vegetables never last longer than a couple of days once you buy them.
12. Petrol is also a lot more expensive in Broome. At the moment, unleaded petrol costs between \$1.60 and \$1.70 per litre. That's the standard price across town. You don't really get the option of trying to find cheaper petrol at a different petrol station.
13. I can spend anywhere between \$70 to \$100 a week on petrol. Sometimes it can be higher if I have to drive my partner around for his work, as he often has to attend jobs outside of town.
14. Flights to and from Broome are expensive. I have seen return flights to Perth on sale for \$800.
15. My partner and I don't receive any government subsidies or allowances through our employer.

### **Climate**

16. The winter in Broome is fine, but in summer the heat is unbearable. I don't like the heat in Broome; it's horrid.
17. Broome has a lot of heatwaves.
18. There are often cyclones in Broome. In the past month there have been 3 cyclones. One of the cyclones, about 2 weeks ago, washed away the main highway into Broome and flooded the road between Broome and Port Hedland. Broome was isolated for about 3 days without any access in or out. Food had to be air-dropped in until the roads were fixed.

19. During the wet season it can be difficult to get to and from work because of the weather. Sometimes you have to close work early just so you can get home before the storm hits.

### **Isolation**

20. I'm currently studying a Certificate IV in Veterinary Nursing online through a New South Wales provider. There weren't any options to study Veterinary Nursing in Broome. It's hard to access TAFE and university here.
21. It can be difficult to study online sometimes because of the internet connection. The connection gets really slow if its raining and overcast, or if multiple people are on the internet at the same time.
22. There have been occasions when some of the stores run out of stock because a delivery hasn't arrived from Perth. The petrol stations have run out of petrol before because there wasn't a regular truck coming up to Broome to do a delivery.
23. My store has arranged a regular weekly delivery to make sure we don't run out of petrol. If a station does run out of petrol, it can take a truck around 3 days to bring a delivery to Broome.
24. Broome doesn't have a lot of events go on in town. There is a regular market, but it is more aimed at tourists to the area. There aren't really any events which are put on for the locals.
25. Most weekends we take our dogs to the beach because that's the only thing you can do up here.
26. There is a cinema which is good, but it is expensive. Going out for dinner and a movie can end up costing a lot of money.
27. I get frustrated by the lack of resources and events in Broome. I see lots of concerts and events happening in the major cities, but nothing like that ever happens in Broome.
28. The closest town to Broome is Derby, which is about a 2-hour drive away. The closest major town is Port Hedland, which is a 6-hour drive away.
29. Derby used to have an airport, but it was closed. Now people have to drive 2 hours to Broome to catch a flight.
30. The road between Derby and Broome can be quite dangerous because there's often stray cattle of the road which can cause accidents.

31. There is one major hospital and they can treat most minor issues, but if you need major surgery you have to be flown down to Perth.
32. The doctors in Broome are good, but there is a long wait to get an appointment. The wait for an appointment can be around 2 weeks. If you can't wait that long, then you just have to go to the hospital.
33. It costs around \$80 to have an appointment with a doctor or specialist in Broome.
34. There can be long delays waiting for Police to arrive. I had to call the Police once at work about an assault and it took them approximately an hour to respond.

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Shania Simons

**Dated:**

Fair Work Commission

*Fair Work Act 2009*

s.185 - Application for approval of an enterprise agreement

**AM2014/190: District Allowances Modern Award Review**

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**WITNESS STATEMENT OF PETER O'KEEFFE**

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I, Peter O'Keeffe, of [REDACTED] say as follows:

**Background**

1. I have been the Secretary of the Shop, Distributive and Allied Employees' Association of Western Australia (**SDAWA**) since 12 February 2014.
2. I have been the Secretary of the Western Australian Branch of the Applicant (**SDA**) since 4 June 2014.
3. From May 2002, I was employed by the Western Australian Branch of the SDA as an Industrial Officer.
4. From 3 October 2012, I was elected Assistant State Secretary of the SDAWA.
5. I hold the degrees of Bachelor of Economics and Master of Industrial Relations from the University of Western Australia.
6. My role as Secretary of the SDAWA involves responsibilities relating to management, as well as strategic and policy decisions in relation to the terms and conditions of workers, and particularly our members, in the retail, fast food, hair and beauty, pharmacy, and distribution industries.

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Filed on behalf of (name & role of party)	SDA, Applicant Union
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7. My role also includes the negotiation of enterprise agreements, investigation of suspected safety breaches, resolution of workplace grievances and site visits to inform members of current issues affecting their workplace.
8. I am aware that the SDA has applied to have district allowances payable in the Kimberley, Pilbara and Gascoyne regions of Western Australia (**Regions**) inserted in the General Retail Industry Award 2010, Fast Food Industry Award 2010, Vehicle Manufacturing, Repair, Services and Retail Award 2010, Hair and Beauty Award 2010, and the Pharmacy Industry Award 2010.

### **Membership of the SDAWA in the Regions**

9. The SDA in WA has a total membership of about 22,471.
10. Of those members, about 549 work in the Regions.
11. The vast majority of those members are covered by enterprise agreements in their employment. Only about 6 members are reliant on the award for the terms and conditions of their employment.
12. Through my various roles with the SDA and SDAWA over the last 16 years, I have had contact with members who work in the Regions and with organisers who have visited the Regions.
13. I do not think it is surprising that most members of the SDA in the Regions are covered by enterprise agreements.
14. The SDA regularly negotiates national enterprise agreements with large employers, such as Coles or McDonalds, thereby ensuring that employees are covered across Australia.
15. The Regions are also difficult to resource and organise.
16. It requires several hours of travel by plane to reach all locations within the Regions. Air travel is also the only practical and efficient option for travelling between towns due to the large distances involved.
17. The towns in the Regions are relatively small. To my knowledge, the largest town would be Karratha with a population of about 15,000 people.



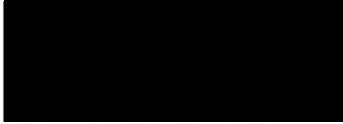
18. The result is that it is generally extremely costly to visit workplaces in the Regions, particularly relative to the number of prospective and existing members.

**District allowances in enterprise agreements**

19. District allowances for workers in the Regions have historically been included in enterprise agreements negotiated by the SDA in recognition of the disabilities that workers in the Regions face in terms of cost of living, climate and isolation.
20. In the past, there were never any difficulties with including district allowances in enterprise agreements because they were a well-established feature of the award system in Western Australia, and were later included as transitional provisions in modern awards.
21. Since the removal of district allowances from modern awards, it has become much more difficult for the SDA to bargain for district allowances.
22. As mentioned, many of the enterprise agreements negotiated by the SDA, and particularly those covering the most employees, are negotiated at a national level.
23. For example, there are about 146 members of the SDAWA in the Regions who are employed by Coles and covered by the Coles Agreement.
24. While I do not know the precise figure, I would estimate that more than 75,000 workers are covered by the Coles Agreement.
25. It is difficult during bargaining to advance a claim that is only made on behalf of such a small group of employees. In any event, and as mentioned, it is also difficult to organise employees in the Regions.
26. In my opinion, without the inclusion of district allowances in modern awards, it will be very difficult for workers in the Regions to negotiate for district allowances through enterprise bargaining.
27. For example, in the latest round of bargaining with Coles the SDA managed to negotiate to “grandfather” existing employees so that they would continue



to receive district allowances. However, district allowances have otherwise been removed from the Agreement for new employees.



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Peter O'Keeffe

**Date:** 16 February 2018