



A•S•U

File/Our Ref: [AM2014/190](#) DS/sa  
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Friday, 5 May 2017

The Hon. Justice Ross AO  
President  
Fair Work Commission  
Victoria Registry  
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Melbourne VIC 3000

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**National Secretary**  
David Smith

**Assistant National Secretaries**  
Greg McLean  
Linda White

Your Honour

**Re: AM2014/190 – Transitional Provisions – Common Issues – District Allowances (4 yearly review of modern Awards)**

We refer to the above mentioned matter and the ASU's most recent submission dated 16 May 2016. A copy of that submission is attached.

We also refer to your Honour's statement [2017] FWC 2189, made in relation to Family & Domestic Violence Leave Clause and Other Matters. With respect we wish to advise that the District Allowances matter reported at Attachment A. did not include the ASU block application in relation to 11 modern awards.

The ASU confirms that we seek to continue to pursue our application in the District Allowances matter and submit with respect, that the Full Bench should be reconstituted to finalise the matter. As previously put to the Full Bench before the Vice President resigned, the ASU also affirms that the reconstituted Full Bench should then list the matter for a Directions Hearing to deal with the programming of site visits, Hearings and related issues.

The ASU also submits that the former Vice President failed to relist the matter for programming and as a consequence, delays to date have significant implications for the current witness evidence and submissions. The ASU application in its current form relies on the Commission to consider the implications of [2015] FCAFC 131 (the Broken Hill Decision) and continues to rely on scheduling site inspections to determine locations, as well as a rationale for setting a minimum allowance.

The ASU has consulted with the SDA on issues for programming of the matter, as well as other retail industry enterprise agreement matters currently being heard by the Commission. In principle, the ASU supports the views of the SDA and we anticipate that their views will be outlined in their submission to be lodged later today.

Therefore, the ASU respectfully submits that any directions your Honour makes to reconstitute the Full Bench for this matter should also take into account the appropriate time for programming this matter.

If your Honour decides to reconstitute the Full Bench for this matter, the ASU would seek a Directions Hearing to discuss the need to supplement evidence and submissions so that they may take into account all matters that have arisen in the intervening period. The need to conduct site inspections would be of primary concern to the ASU.

Yours faithfully



David Smith  
NATIONAL SECRETARY

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Monday, 16 May 2016

Vice President Watson  
Fair Work Commission  
11 Exhibition Street  
Melbourne VIC 3000

Email: [chambers.watson.vp@fwc.gov.au](mailto:chambers.watson.vp@fwc.gov.au)

Dear Vice President Watson,

**Re: AM2014/190 - Common Issues - Transitional Provisions - District Allowances (4 yearly review of modern awards)**

We refer to the above matter and Directions issued on 7 April 2016.

The ASU acknowledges the date for Union submissions in afore mentioned Directions and confirms that we will continue to rely on our submissions dated 6 March and 1 May 2015. There is however a necessity to update and accurately adjust our draft determinations originally lodged in particular with respect to the quantum and accuracy of the district allowances.

The ASU anticipates that arising from your Directions the Fair Work Commission will list the matter for a conference to deal with the programming of site visits, Hearings and related issues. At that time the ASU will make further submissions in relation to when to visit and how to select locations for site inspections.

The ASU has read the SDA's further submissions and evidence lodged with the Fair Work Commission on 12 April and support those submissions in particular in relation to the substantive evidence provided.

Furthermore, the ASU highlights the issue of the Union applicants' right of reply to the employer parties who were originally required to file amended submissions and further evidence by 6 May 2016. At this point we have not received submissions from AiG and ABI but acknowledge they have been granted an extension of time until today.

At the time of writing, the Fair Work website does not currently provide a link to the correct ASU submission dated 6 March 2015. A copy is attached for the convenience of all parties.

The ASU submissions dated 6 March and 1 May 2015 primarily seek to continue district allowances as a common matter at paragraphs 15 to 20 (6/3) and paragraphs 4 to 7 (1/5/2015).

The ASU also affirms consistent with submissions at paras 21 to 24 (6/3) and paras 8 to 10 (1/5/2015), that locations relevant to each modern award should be the subject of further submissions following completion of inspections; at which time the Commission can be properly informed of criteria for evaluating isolation, harsh climate and high cost of living.

As was submitted at paras 18 to 33 (6/3) and paras 18 to 24 (1/5/2015), the ADF district allowance is a modern payment to staff who work in "Australian remote locations" and compensates for "isolation, harsh climate and high cost of living".

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The draft determinations submitted by the ASU include ADF minimum rates for locations sorted into five grades but do not include all rate levels of allowance payable to ADF staff. In respect of the rates, the ADF pays a minimum rate for staff who occupy “Living-in accommodation” (Australian Government Department of Defence, *ADF Pay and Conditions Manual* (PACMAN), Canberra, AL23 (at April 2015) [Chap 1 Pt 3 Div 1 clause 1.3.32]):

Living-in accommodation means either of these forms of accommodation.

- a. A barracks or similar kind of residential accommodation that meets both these conditions.
  - i. It is owned or controlled by the Commonwealth.
  - ii. It is provided primarily for the use of members without dependants.
- b. Accommodation like that described in paragraph a. that a foreign government or other organisation provides for members without dependants.

The ASU has found a miscalculation in our draft determinations because the rates shown were the minimum rates payable to an ADF staff member without dependants and with Employer provided accommodation.

The ASU relies on the current Australian Defence Force (ADF) Determination regarding the payment of the ADF district allowances. The Defence Force Remuneration Tribunal (DFRT) made Amendment List No. 20 dated 23 October 2014 and approved routine adjustments to remote location allowances. The current district allowance rates are published in the PACMAN ([Chap 4 Pt 4 Div 1]).

The ASU’s draft determinations to vary 11 awards, provides the Commission with an example of a modern district allowance at the minimum ADF rates. The draft also includes an Accident Pay entitlement that should be removed now that it has been separately determined for certain awards.

The ASU proposes to update the original draft determinations by removing the variations referencing Accident Pay and update the proposed variations referencing District Allowances so that locations and rates are consistent with the most recent DFRT amendment for Employees living in accommodation not provided by the Employer and without Dependants.

The updates would reduce locations listed within Western Australia. The following annual rates would also be updated for locations graded A to E, as follows:

Item	Location graded	Yearly rate of allowance (\$)
1.	A	1,300
2.	B	3,710
3.	C	4,640
4.	D	6,500
5.	E	7,425

The ASU will lodge amended draft determinations accordingly either before or, at the latest, hand them up during the next formal hearing in this matter.

It is worth noting that the ASU and SDA have been consistently supported by all Unions in this common issue as per the following resolution endorsed at the last meeting of the ACTU National Executive held 8 - 9 March 2016:

*Resolution: District Allowances*

*That the ACTU Executive fully supports the ASU and SDA district allowance case currently before the full bench of the FWC; via the - 4 yearly review of modern awards of Transitional Provisions – District Allowance.*

*District Allowances have formed an integral part of employment arrangements for decades are an important condition of employment that compensates employees who work in regional and remote locations reliant on awards to set their condition of employment.*

*The ACTU fully supports its affiliates in defending this vital allowance.*

Should you have any further queries, please contact ASU National Industrial Officer, Joanne Knight on (03) 9342-1450 at this office.

Yours faithfully



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NATIONAL SECRETARY

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