

4 April 2018

Associate to Deputy President Hamilton
Fair Work Commission
By email: chambers.hamilton.dp@fwc.gov.au and
AMOD@fwc.gov.au

Dear Associate to Deputy President Hamilton,

Re: Proposal for a new Modern Award

1. The Australian Manufacturing Workers' Union (AMWU) writes to seek an opportunity to respond to any relevant facts or other considerations which the Fair Work Commission may take into account in fulfilling its obligations under s.163(2).
2. At the mention on 4 April 2018, Deputy President Hamilton sought clarification about what the AMWU was proposing, in particular whether the AMWU sought a new Award or a variation to an existing Award. At the earlier mention on 16 February 2018, Deputy President Hamilton put a position that:

“One of the achievements of the process of restructuring awards over the last 10 or 15 years, has been reducing numbers of awards. The question is, and this has been raised with you before, repeatedly. Why would you make a separate award for such a small group of employees?”¹
3. In general terms, the *Fair Work Act 2009* (the Act) places no restriction upon the creation by the Fair Work Commission of new Modern Awards. This is made clear by the existence of s.163(2), which infers that there is a possibility to create new Modern Awards, following the discharge of the obligation to consider an alternative. Further, support for this construction, is found in s.168C(1) of the Act, which places a definite restriction upon the creation of any new Modern Enterprise Awards under the Act. Modern Enterprise Awards may be made through the Enterprise Award Modernisation transitional process found in Schedule 6 of the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* – which is an equivalent process to the “Part10A Award Modernisation” process which resulted in the current Modern Awards.
4. The AMWU in its submission 20 September 2017 indicated a preference for a separate new Award. However, we had also acknowledged that it was a requirement under s.163(2) for the Fair Work Commission to consider whether it was appropriate to vary an existing award.² At the mention on 16 February 2018, the AMWU indicated in response to a question from Deputy President Hamilton that this option had been canvassed in our submissions. When asked by the Deputy President if the AMWU would “*be possibly happy*” with a variation to an existing Award we had indicated yes. However, at no point, did the AMWU drop its primary submission that there should be a separate Award.

¹ [Transcript 16 February 2018](#) at PN80

² [AMWU Submission 20 September 2017](#) at paragraphs 43 - 45

5. Babcock, the only employer intervener in the proceedings, in their original submissions 6 December 2017 indicated agreement with the AMWU position that the Aircraft *“Cabin Crew Award 2010 would not be an appropriate base instrument and that it would be preferable and consistent with the modern awards objective for a modern award to be created specifically for helicopter aircrew.”*³
6. Following further questioning by Deputy President Hamilton at the mention on 16 February 2018 and again on 4 April 2018, Babcock indicated at the mention on 4 April 2018 that they did not have a strong view about the issue.
7. This means that there are presently no strong objectors putting a clear position against the AMWU position, that there should be a new and separate award for Helicopter Aircrew.
8. Because there have been no active parties presenting an opposition view to what the AMWU has proposed as the primary position, it is not possible to understand on what basis a party might consider that it is more appropriate under the current legislative framework to vary an existing award, rather than make a new award.
9. The varying of an existing award such as the Aircraft Cabin Crew Award 2010 would necessarily involve industry groups and significant players with an interest in that Award. The variation of an existing Award with such significant organisations is resource intensive for a significant number of parties who must trawl through the contents of proposed variations to an Award to simply clarify their interest in the issue, which is not the kind of economic activity intended by the Modern Awards Objective. It does not add anything to the simplicity or ease of understanding for the Modern Awards System or any other objective of the Modern Awards Objective.
10. In light of the above the AMWU respectfully requests an opportunity to be informed if the Fair Work Commission intends to take into account any relevant facts or matters in discharging its obligations under s.163(2) and importantly, to be given an opportunity to respond to the detail of those relevant facts or matters. This opportunity to respond to relevant matters or facts which the Commission may take into account is relevant to the Commission’s obligations under s.577.

Yours sincerely,



Michael Nguyen
Senior Research Officer

CC: Babcock (Vince Rogers and Chris Ridings)
AWU Stephen Crawford

³ [Babcock Submission 6 December 2017](#) at paragraph 12