

## IN THE FAIR WORK COMMISSION

**Matter No.:** AM2016/3 Proposed Helicopter Aircrew Award



### **Submissions in reply of the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union (AMWU)**

#### **4 Yearly Review of Modern Awards**

## **COVER SHEET**

### **About the Australian Manufacturing Workers' Union**

The Australian Manufacturing Workers' Union (AMWU) is registered as the "Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union". The AMWU represents members working across major sectors of the Australian economy, including in the manufacturing sectors of vehicle building and parts supply, engineering, printing and paper products and food manufacture. Our members are engaged in maintenance services work across all industry sectors. We cover many employees throughout the resources sector, mining, aviation, aerospace and building and construction industries. We also cover members in the technical and supervisory occupations across diverse industries including food technology and construction. The AMWU has members at all skills and classifications from entry level to Professionals holding degrees.

The AMWU's purpose is to improve member's entitlements and conditions at work, including supporting wage increases, reasonable and social hours of work and protecting minimum award standards. In its history the union has campaigned for many employee entitlements that are now a feature of Australian workplaces, including occupational health and safety protections, annual leave, long service leave, paid public holidays, parental leave, penalty and overtime rates and loadings, and superannuation.

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**Attachment A – Statement Mr Charles William McGregor-Shaw 24 January 2018**  
**Attachment B – Statement Mr Stephen Ford 19 January 2018**

## **Introduction**

1. The following Submissions in Reply are made by the Australian Manufacturing Workers' Union in response to the Submissions of Babcock Mission Critical Services Australasia Pty Ltd (Babcock) 6 December 2017.
2. The AMWU notes that Babcock do not oppose a Modern Award being created for Helicopter Aircrew. However, Babcock do object to a number of terms in the AMWU's proposed Award.
3. Specifically, these Submissions will address the Babcock objections to specific terms, which are:
  - a. Clause 16.6 (Transmission of business);
  - b. Clause 17 (Classifications);
  - c. Clause 18.3 (Annual Increment);
  - d. Clause 19.1 (Safety equipment allowance);
  - e. Clauses 19.3 (Mobile Intensive Care Ambulance allowance) and 19.4 (Other Required Additional Skill Certification Allowance);
  - f. Clause 19.22 (Indemnity);
  - g. Clauses 19.23 (Insurance) and 19.24 (Income Protection Insurance);
  - h. Clause 20 (Accident pay);
  - i. Clause 26 (Multiple day tours);
  - j. Clauses 27 (Overtime days worked) and 28 (Overtime hours worked);
  - k. Clause 30 (Annual leave);
  - l. Clause 31 (Personal/carer's leave and compassionate leave); and
  - m. Clause 33 (Public holidays).
4. Attached to these submissions in reply are two further witness statements from:
  - a. Mr Charles William McGregor-Shaw (Attachment A); and
  - b. Mr Stephen Ford (Attachment B)

## **Clause 16.6 Transmission of Business**

5. Babcock say that the clause is inconsistent with Part 2-8 of the Act which deals with Transfer of Business and therefore should not be included.

6. The AMWU does not agree that the clause is inconsistent with Part 2-8.
7. However, upon closer inspection, the AMWU acknowledges that the effect of clause 16.6 may be the same effect as s.22(5), which deals with when service with one employer counts as service with another employer.
8. The effect of clause 16.6 is that continuity of service is not broken when a business and an employee are transferred to another employer and the service with the earlier employer is deemed to be service of the new employer.
9. The effect of s.22(5) is the same, except it also provides:
  - a. That the employment may transfer within a 3 month period (s.22(7)(a) and s.311(1)(b));
  - b. The transfer of employment may be between associated entities and not involve any asset transfer (s.22(7)(a) and s.311(6));
  - c. The transfer of business is defined broadly to include any transferring of assets (tangible or non-tangible) (s.311(3));
  - d. The transfer of business also includes outsourcing and insourcing arrangements (s.311(4) and (5)).
10. If the Commission is of the view that the effect of the clause is the same as the effect of the Act, the AMWU does not advance any submission for its retention in the Proposed Award.
11. However, if the Commission is of the view that the effect is different, the AMWU submits that the proposed clause should be retained to provide for a standard of entitlements which was provided for by the CHC enterprise award.

## **Clause 17 Classifications**

12. The AMWU does not oppose the classification of "Surveillance or Rescue Aircrewperson" being split into two classifications "Surveillance Aircrewperson" and "Rescue Aircrewperson," subject to a further understanding of what that separate definition means in terms of conditions and entitlements under the Award.
13. The AMWU's current proposal is that the current "Surveillance or Rescue Aircrewperson" classification would be paid at the "Qualified Rescue Crewperson" wage level in clause 18.
14. The parties may benefit from further discussing what the effect of Babcock's proposed separate classification definition is in terms of conditions and entitlements.
15. As will be discussed further down, the AMWU also acknowledges that the AMWU's proposed "Fitness Allowance" may not be applicable to Surveillance Aircrewperson.

## Clause 18.3 Annual Increment

16. Babcock opposes the inclusion of an Annual Increment on the basis of various Commission decisions cited, which indicate increments based exclusively on length of service may conflict with the role of a safety net. The particular paragraph cited by Babcock is from the Award Modernisation decision about the Local Government Award and is as follows:

“[140] In relation to classifications, several parties, including the ASU, made submissions seeking the inclusion of service increments within particular classification bands. There is a tension between increments based ***exclusively on length of service*** and the concept of a modern award safety net and, generally speaking, such increments are not appropriate for inclusion in a modern award that must be a safety net. We are not persuaded that we should alter the classification structure in the exposure draft by the addition of service increments or by the addition of increments that are in substance new and additional classifications. We have changed the classification titles from “Bands” to “Levels”.<sup>1</sup> (emphasis added)

17. The Paid Rates Review decision of the AIRC gave a clear explanation which indicates that there is a role for annual increments which are based on skills:

“(b) Incremental Payments

We now turn to consider whether incremental payments should have any role in the award system. The legislative scheme requires that the great majority of awards, being made under Part VI, will be of a minimum rates character. This fact, together with a consideration of the history of service increments in awards generally, leads us to the conclusion that increments which are not based on work value should not appear in minimum rates awards. In our view the abolition of advancement between pay points based primarily on service is also consistent with increased flexibility and the encouragement of agreement making. Performance management, for example, may be made more difficult where the award contains an incremental structure which is unrelated to change in the nature of the work. When the Commission is fixing appropriate minimum rates in awards which contain increments it will be necessary, subject to exceptions, to make arrangements for increments to be phased out.

Additional payments which are geared primarily to length of employment are not consistent with properly fixed minimum rates because they are not based on work value. For example, incremental payments in APS awards accrue after 12 months' service subject only to "the employee demonstrating satisfactory diligence, efficiency and attendance for duty". Those conditions can be contrasted with the requirements for advancement for an enrolled nurse under the Australian Public Service,

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<sup>1</sup> [Award Modernisation Decision re Stage 4 Awards \[2009\] AIRCFB 945](#)

General Service Officers (Salaries and Specific Conditions) Award 1995 [Print M8995]. Pursuant to the provision of Schedule B to the award progression from one pay point to the next is subject to an enrolled nurse meeting the following criteria:

- competency at the existing level;
- 12 months' experience at that level and in-service training;
- demonstrated ability to acquire the skills which are necessary for advancement to the next pay point.

An enrolled nurse's progress may be deferred or refused by the employer where the nurse has not fulfilled the criteria for advancement to the next pay point.

Where the relevant award does not make progression through the incremental scale dependent on changed work value, the incremental payments cannot be treated as part of the minimum rate. Where it can be demonstrated, however, that incremental payments were included in the award pursuant to the relevant work value principle or on grounds of structural efficiency and work value, the retention of such payments is permissible.

Where the Commission determines that increments are in excess of a properly fixed minimum rate, they will, in accordance with the principles, be separately identified as a residual amount above the minimum rate and subject to absorption against increases to rates in the award.”<sup>2</sup>

18. Further to this statement, in setting the principles to be applied, the Commission established the following principle at point 8:

“8. Increments will only be retained where they have been included in the award pursuant to the relevant work value principle or where it can be established that the increments were inserted by the Commission on grounds of structural efficiency and work value.”<sup>3</sup>

19. This principle was applied in a decision about the *Ambulance Services and Patient Transport Employees Award, Victoria 2002* which considered the Paid Rates Review Decision and the Paid Rates Principles and endorsed annual increments.<sup>4</sup> The decision was appealed to a Full Bench who retained the increments.<sup>5</sup> The Modern Award for *Ambulance and Patient Transport Industry Award 2010* retains the annual increments.

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<sup>2</sup> [Paid Rates Review Decision 20 October 1998 Print Q7661](#) under heading “13. Decision (b) Increments”

<sup>3</sup> [Paid Rates Review Decision 20 October 1998 Print Q7661](#) under heading “14. 14. PRINCIPLES FOR THE CONVERSION OF AWARDS WHICH DO NOT CONTAIN PROPERLY FIXED MINIMUM RATES.”

<sup>4</sup> [Award Simplification Ambulance Services and Patient Transport Employees Award, Victoria 2002 PR945582 Decision of Commissioner Holmes](#) at Paragraphs [94] to [138]

<sup>5</sup> [Award Simplification Ambulance Services and Patient Transport Employees Award, Victoria 2002 AIRC FB Appeal PR961450](#) at [6] to [18]

20. Workers engaged in missions and operations in the aviation industry receive payments defined by length of service, but which are not arbitrarily “based exclusively on length of service.” Length of service in the aviation industry and specifically length of service payments for Helicopter Aircrew is in recognition of skills obtained through experience which are not able to be accurately described and recorded as for other industries and occupations.
21. Many skills, particularly response skills are obtained only through experience of hazards and incidences which are not able to be foreseen and/or modelled in structured training. These types of skills improve in a significant way, the safety and productivity of aircraft missions conducted by the Helicopter Aircrew. Mr Charles William McGregor Shaw and Mr Stephen Ford’s statements give a statement about how each year of experience improves their safety and productivity.<sup>6</sup> The work of Helicopter Aircrew engaged in patient transport or search and rescue missions is very similar to those in the Ambulance industry in some ways. However, it involves a higher level of transport related precision in a range of different terrains.
22. All of the Enterprise Agreements which were included as appendices to the witness statements in the AMWU’s original submissions 20 September 2017 contain payments in recognition of years of service through annual increments.

### **Clause 19.1 Safety Equipment Allowance**

23. There may be room for the parties to arrive at a clause which reflects the current practice.

### **Clause 19.3 Mobile Intensive Care Ambulance Allowance**

24. The Mobile Intensive Care Ambulance allowance only applies to those Aircrew who are required to undertake that training. It does not apply to workers who are not required to undertake the training. Any of the operators may tender for and win the Ambulance Victoria contract as it comes up for renewal. In addition, there may be other Ambulance or Health agency functions which may be outsourced in the future which may require the same training.
25. Helicopter transportation services provided to Ambulance or Health agencies are a function which is likely to increase in line with the increase in health occupations generally. It is not an obsolete or dwindling function in the community.
26. For example, recent research by the AMWU has uncovered that the NSW Government Department of Health completed a tender process which resulted in the creation of two New South Wales regions, a Northern Region to be serviced by Northern NSW Helicopter Rescue Service Pty Ltd and a Southern Region to be serviced by Toll Helicopters (NSW) Pty Ltd.<sup>7</sup>

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<sup>6</sup> See Statement of Mr Charles William McGregor-Shaw January 2018 and Statement of Mr Stephen Ford January 2018.

<sup>7</sup> <http://www.health.nsw.gov.au/helicoptertender/Pages/default.aspx>

27. The Toll Helicopters Enterprise Agreement reveals that the Aircrew working on the NSW Health contract are being paid between \$15,000 and \$17,000 per annum more than those Aircrew who are not working on the NSW Health contract. In addition, those based in Sydney at Bankstown receive a location allowance of \$10,000 and an additional duties allowance of \$5000 per annum on top of this.<sup>8</sup> This is much more than the \$3150.50 allowance being sought by the AMWU for the proposed Award.

#### **19.4 Other required Additional Skill Certification Allowance**

28. In relation to other additional skill certification, Helicopter Aircrew are constantly required to undertake new and different training that needs to be certified (either internally by the business, or by externally approved method). New types of training are at times required by the employer or by the business the Helicopter service is provided to. For AMWU members this is not an unusual or unlikely event. As evidenced by Mr Charles William McGregor-Shaw, who cites an example of Helmet maintenance training which would not be associated with Helicopter Aircrew for a lay person, but which adds value for the company and is necessary for the operation of the Helicopter service.
29. The most important thing for a minimum safety net is to properly recognise and compensate specific skills. For this to occur, there should at minimum be a process of discussion between the business and workers which determines how the new training is to be implemented and what the level of compensation should be for the retention and use of those skills, on top of the retention and use of existing skills. If agreement cannot be reached between the workers at a workplace and the business, then the safety net should provide a minimum amount of compensation for the additional training and skills obtained.
30. In an industry where new skills are likely to be required by employers from time to time based on the contract for service and based on requirements by the business, there should be an allowance to compensate for those skills and training. This is further justified where the training is required to be certified, whether in-house or externally.

#### **Clause 19.5 Fitness Allowance**

31. There is a level of fitness for Helicopter Aircrew (except for surveillance Aircrew) which is necessary to be maintained regardless of whether they are working on a contract which requires a fitness test.
32. The statement provided by Mr Stephen Flanagan 6 December 2017 from Babcock seems to support the position that all Aircrew (other than surveillance aircrew) are required to perform a fitness test. The form of which is attached to his statement at SJF – 2.
33. For AMWU member Aircrew (other than surveillance Aircrew), there is a requirement for fitness to undertake the core functions of the job. Mr McGregor-

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<sup>8</sup> <https://www.fwc.gov.au/documents/documents/agreements/fwa/ae421948.pdf> in Schedule 2 of the EA



Shaw's statement 24 January 2018 provides evidence about the necessity of fitness to perform the core functions of the role.

34. It would appear from Mr McGregor-Shaw's statement that a business would be under a duty of care to ensure there is a level of fitness attained by Aircrew engaged in the operation of a winch to avoid injury.
35. The AMWU acknowledges that the clause could be re-drafted to accommodate the circumstance of Surveillance Aircrew who are not required to maintain a level of physical fitness in the work that they perform.

### **Clause 19.22 Indemnity**

36. Indemnity is an industry standard that is expected by Aircrew in the industry. Aircrew should not be required to obtain insurance for damages arising from the provision of services provided by the business.
37. The work of Aircrew in missions, providing support to Pilots and in Crew Resource Management mean that they are in a similar position to Pilots. Specifically, they are in a similar position in that different people may have differing views about the most appropriate course of action that should have been taken in any given moment in response to a situation.
38. Because of this specific role Aircrew play in missions, it is necessary for Aircrew to be indemnified for the work that they do. The missions engaged in by Helicopter Aircrew may be high risk and involve injured passengers. At times a response may result in a different outcome than if a different response was given to a situation. This response may not be negligent, but it may be different to the response another Aircrewperson may have given in the same circumstances.
39. While a company may also be vicariously liable, they should also be required to ensure that Aircrew are not personally liable for incidences occurring while they perform their job. Aircrew are not paid an amount which adequately compensates them for risk of litigation for damages incurred during the performance of their duties. Damages which involve injured persons are more likely to be high. Exacerbated injuries as a direct result of an extraction for which an Aircrewperson was responsible for Crew Resource Management is foreseeable.
40. Mr McGregor-Shaw's statement 24 January 2018 indicates that in his experience, he would expect that indemnity is provided. The various enterprise agreements attached to statements attached to the AMWU's earlier submissions also indicate that indemnity is an industry standard.
41. Babcock refer to Award Modernisation decisions which they say indicate indemnity is a highly prescriptive clause which should be in enterprise agreements. The full context of the paragraph they refer to is as follows, and when read as a whole does not indicate as strongly the point that Babcock make:

“[8] The parties have requested that a number of agreed provisions which were omitted from the exposure draft should be reinserted. The provisions include highly prescriptive clauses which we would expect

belong more in enterprise agreements rather than a minimum safety net award. Nevertheless we have decided to include agreed provisions regarding additions to salary, Civil Aviation Safety Authority (CASA) drug testing, suspension of employees, commission payments on termination of employment, splitting of meals and accommodation provisions, pilot indemnity and some other corrections and minor variations sought by the parties.”<sup>9</sup>

42. In any event, it was determined to be part of the fair and relevant minimum safety net, and the Fair Work Commission Full Bench in its Preliminary Jurisdictional Decision in this 4 yearly review noted the following:

“[24] 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. 14 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.”<sup>10</sup> (emphasis added)

43. While the AIRC Full Bench may have indicated a policy preference in the decision, it can only be considered obiter. The important part of the decision which is of note, is that the Full Bench made the Award and included an indemnity provision. Further, the Full Bench record that in making the Awards they discharged their legislative obligations. The Full Bench made an award which they indicate was compliant with the provisions of the Minister’s Request which are now replicated in the Modern Awards Objective (with some recent amendments which are not relevant to this issue). Their recorded decision notes the process is being carried out pursuant to the Minister’s request (consolidated request) amongst other legislative provisions.

“[1] This decision deals with the award modernisation process and in particular the Stage 3 modern awards. The decision should be read in conjunction with earlier decisions concerning award modernisation. The process is being carried out pursuant to statutory provisions and a request made by the Minister for Employment and Workplace Relations (the consolidated request)....”<sup>11</sup>

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<sup>9</sup> [Award Modernisation Decision Stage 3 \[2009\] AIRCFB 826 at \[8\]](#)

<sup>10</sup> [Preliminary Jurisdictional Issues Decision – 4 yearly review \[2014\] FWCFB 1788 at \[24\]](#)

<sup>11</sup> [Award Modernisation Decision Stage 3 \[2009\] AIRCFB 826 at \[1\]](#)

44. There is nothing in the decision cited by Babcock which would indicate that indemnity clauses would result in an award failing to achieve the modern awards objective.

### **Clause 19.23 Insurance and Clause 19.24 Income Protection Insurance**

45. The most significant issue for Aircrew which sets them apart from other workers in other industries or occupations is the difficulty they may find obtaining an insurance policy and/or the higher premiums they may be required to pay in order to obtain it.
46. Mr Stephen Ford's statement 19 January 2018 indicates that he was refused income protection insurance and was unable to obtain a policy to cover him because of his line of work in "aviation." Mr MrGregor-Shaw indicates that when he obtained insurance privately it was very expensive to do so.
47. These factors which are attributable to the occupation of Aircrew indicate that these allowances are necessary to compensate for the change to their personal circumstance experienced by the Aircrew who are required to work in conditions which render them either unable to obtain insurance individually, or result in them paying much higher premiums than the average workers.
48. The AMWU acknowledges that the terms may be redrafted to accommodate the current practice. However, the AMWU does not concede that the terms are excessive or disproportionate given the self evident and inherent risks associated with Aircrew work, which is evidenced by the response of insurance companies to Aircrew insurance policies.

### **Clause 20 Accident Pay**

49. Babcock has referenced a decision which dealt with transitional provisions in Modern Awards. The decision referenced involved a case with no evidence about the work performed in each industry. The case only looked at the Award Modernisation materials and undertook to complete a task deferred by the Award Modernisation Full Bench by considering the pre-reform instruments and pre-Modern Award instruments relevant to the making of the Modern Award.
50. In the present case, that decision is not relevant because it did not consider any substantive claim for an Accident Make-up Pay entitlement.
51. The Safe Work Australia statistics indicate that Transport, Postal and Warehousing has the second highest fatality rate per 100,000 workers, and has the fourth highest incidence of serious injury per 1,000 workers.<sup>12</sup>
52. The industry has Accident Make-up Pay as a standard.
53. It is also the AMWU's evidence that fitness is critical to avoiding injury for Aircrew (other than surveillance aircrew) due to the specifics of the nature of their physical activity on the job.

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<sup>12</sup> <https://www.safeworkaustralia.gov.au/book/key-work-health-and-safety-statistics-australia-2017>

54. These considerations point to a fair and relevant safety net including Accident make-up Pay for workers engaged in high risk work where injuries can be sustained due to slight lapses in physical fitness.

### **Clause 26 Multiple Day Tours**

55. Babcock's proposed clause from the Pilots Award 2010, particularly the clause which purports to provide annual leave, excludes the NES Annual Leave and Public Holiday provisions in favour of an inferior entitlement.
56. The AMWU is open to discussing an appropriate clause that comprehends and accommodates the work patterns of Babcock. However, the AMWU is opposed to any clause which excludes the NES or purports to exclude the NES.

### **Clause 27 Overtime days worked and Clause 28 Overtime hours worked**

57. The AMWU is open to discussing clearer phrasing for the overtime clauses.

### **Clause 30 Annual Leave**

58. Given Babcock's position in relation to annual leave above in relation to the permanent touring workforce, it will be necessary to review this clause in conjunction with the issues identified above in relation to the NES.
59. The AMWU is not opposed to redrafting the clause to make it clearer. However, the AMWU is opposed to any reduction in the entitlement to annual leave and public holidays arising from the gerrymandering of leave in relation to a roster cycle and/or arising from double counting of rostered days off as annual leave accrued.
60. The AMWU is not opposed to the inclusion of the model annual leave terms about excessive annual leave, cashing out of annual leave, annual leave in advance and electronic transfer payment of annual leave.

### **Clause 31 Personal / Carer's Leave and Compassionate Leave**

61. The AMWU is open to discussing further the entitlements to align with the industry standard.
62. However, the AMWU is opposed to any reduction in Upper Respiratory Tract Infection (URTI) leave.
63. The AMWU is also opposed to any requirement for Aircrew to attend for work when they are on URTI Leave.
64. AMWU members are opposed to being exposed to colleagues with infections which may result in them also being infected and losing valuable flying time and experience that improves their skills.

**End**

**24 January 2018**

**FAIR WORK COMMISSION**

*Matter No: AM2016/3 Proposed Helicopter Award*

*Applicant: "Automotive, Food, Metal, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union*

**WITNESS STATEMENT OF CHARLES WILLIAM MCGREGOR-SHAW**

I, Charles William McGregor-Shaw, of [REDACTED] in the Northern Territory, solemnly and sincerely affirm and declare:

**PERSONAL INFORMATION**

1. I make this statement from my own knowledge except where I have indicated otherwise. Where I make a statement based on information provided to me, I believe the information is true and correct.
2. I make this further statement in addition to my statement 12 September 2017.
3. I am now back at CHC Helicopters as a Senior Aircrewman. I returned to CHC on 22 November 2017.

**Annual Increment**

4. We can't use the Pilot's scale for annual increment as their awards pay multi engine allowances, type allowances (i.e. an allowance for each aircraft type they are qualified to fly), etc. Aircrewmen aren't paid these allowances based on engine size or aircraft type as it does not matter so much what engine size or what size the Helicopter is to an Aircrewman and as such he isn't paid these engine size based payments.
5. An Aircrewman's experience is paid as annual increments i.e. over the years as his experience grows and his ability to better manage differing scenarios improves he is solely rewarded by annual increments. There can't be any

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comparison with the pilot Annual increment scheme because Aircrew don't get the same allowance recognition as the pilots who get allowances based on Aircraft size and engine size.

6. Annual increments should stay because the business is paying for the experience and skills gained. The longer a Helicopter Aircrewman does their job, the more experience they have. Having a more experienced Aircrewman, in particular, an Aircrewman with time in the aircraft, means the Aircrewman, would have been exposed to different situations that pop up and as such is more capable to handle each and every different solution. Experience with different situations reduces the risk of mishandling situations.
7. In my 19 years of experience, the years of service continue to expose me to situations and I continue to learn and grow each year. I am a better Aircrewman now than I was a year ago and much better than ten years ago. The company turns to me for my experience and guidance and will continue to do so. Each year of experience should be recognized, valued and acknowledged through an increment regardless of what year.
8. 3% per year is fair, because the experience is growing and an Aircrewperson is getting paid for that experience and is not rewarded via other allowances for that experience and skills.
9. Using Crew Resource Management (CRM) as an example, an Aircrew person's CRM ability grows as you are confronted with different situations. For example, an Aircrewperson's ability to communicate with a pilot grows with exposure to different pilots.
10. Experience has been recognized through annual increments by some businesses for pilots who are paid increments up to 18 years.

#### **Mobile Intensive Care Ambulance Allowance**

11. The Mobile Intensive Care Ambulance Allowance is an annual renewal of the skill set. Once you had the skill set you were paid the allowance for the year that you had it. If you didn't renew the skill set you didn't get it. The time set aside to obtain the renewal training and assessment is organized by the business. If the business doesn't require the renewal, they won't set aside work time for that Aircrewperson to obtain the renewal.

**Other required additional skills certification allowance**

12. As businesses require a new skill set for Aircrewperson, an allowance should be paid for that skill set. In my experience, if a new skill set is required then the company has historically sat down with the Crewmen Group and discussed any 'significant change' (as stated it must in the CHC Agreement) and any possible remuneration for that newly required skillset.
13. For example, at one site, it was proposed that we would be trained to do Aircrew Helmet servicing. There were discussions between the business and workers to agree upon the appropriate allowance that would be paid for the new skill set required. The new allowance was determined by agreement.

**Fitness Test**

14. The job description of Aircrew requires a higher than average level of fitness. As such a form of fitness allowance should be paid for this higher than average level of fitness. We are operating in a bent over, confined and vibrating environment, wrestling with cables and dragging in survivors. We need to keep a level of fitness to ensure that our bodies are flexible and strong and will continue to do so thru-out our career.
15. Any Aircrewperson who is operating in the back of a Helicopter in a winch role or rescue crew role where they are dispatched on the winch, or anyone working in the back of a Helicopter, where they are bent over maneuvering



around require an above average level of fitness to ensure we don't get injured.

### **Indemnity**

16. Indemnity for workers is necessary and a standard accepted in the industry. I just assumed that I was covered and I would be surprised if I wasn't covered for indemnity for my work, other than deliberate negligence.

### **Life, Total Permanent Disability and Income Protection Insurance**

17. ICP, Life and TPD insurance is an industry standard. I would have thought that this is an industry standard. It is expected by Helicopter Aircrew that this is provided for or funding is provided to Aircrew to fund it.
18. CHC provides a Life Insurance and Total and Permanent Disability (TPD) Insurance through our superannuation. I am not sure if the payment comes out of the company's mandatory 9.5% Superannuation contribution or if they pay extra.
19. I had private insurance up to last year and was paying it myself. I found a provider and it was quite high. When I re-joined CHC, I asked about insurance and was told that it was paid out of our superannuation. If we don't join the company's superannuation fund, we don't get the Life Insurance, TPD and Income Protection insurance.

### **Accident Make-up Pay**

20. Accident Make-up Pay is an industry standard that I would expect working as an Aircrewperson.

### **Overtime**

21. If I work more than my rostered/agreed period then I believe I should be compensated. Whether that be through a banking of Time in Lieu or whether

it be through a dollar compensation. It should be flexible as I personally would rather get the time with my family. The time in lieu should be mutually agreed.

22. In our SAR/EMS industry we are not always able to decline overtime as we may be delayed on a life-saving mission and we simply can't "clock off". We also have a moral obligation at times to ensure that the community is covered by its rescue helicopter and as such its not always easy to simply say no to overtime. With this in mind (i.e. the inability to say no or the moral inability to say no to overtime) compensation should reflect the fact that we work shifts that cover 24 hours, 7 days a week, 365 days a year. Other workers get time and a half and double time on Sundays and sometimes triple time when working public holidays or even when they work extra-long shifts. We do all this as the norm so our compensation should reflect this.
23. I am currently compensated for overtime according the *CHC Helicopters (Australia) Crewperson Enterprise Agreement 2015* Schedule 3. At Careflight I was compensated for overtime according to the *Careflight Enterprise Agreement*, which was attached to my earlier 12 September 2017 statement.

#### **Upper Respiratory Tract Infection**

24. My understanding on this justification for this special leave is to avoid bringing the disease to work and spreading the disease through the workplace and then the disease creating lost time for an extended period. Aircrewperson should not come into the workplace if they have an URTI which may impact other.

**END**

  
CHARLES WILLIAM MCGREGOR-SHAW

24/01/18  
DATE

**FAIR WORK COMMISSION**

*Matter No: AM2016/3 Proposed Helicopter Award*

*Applicant: "Automotive, Food, Metal, Engineering, Printing and Kindred Industries Union" known as the Australian Manufacturing Workers' Union*

**WITNESS STATEMENT OF STEPHEN FORD**

I, Stephen Ford, of [REDACTED] in the State of Queensland, solemnly and sincerely make oath and declare:

**PERSONAL INFORMATION**

1. I make this statement from my own knowledge except where I have indicated otherwise. Where I make a statement based on information provided to me, I believe the information is true and correct.
2. I am making this further statement in addition to my statement dated 19 September 2017.

**Annual Increment**

3. As a Surveillance Aircrewman, in the first year you're gaining experience as a visual observer (essentially a trainee Mission Coordinator). After the first year you would then become a Mission Coordinator (MC). Every surveillance mission must have a mission coordinator. There are only three seats for surveillance aircrew on 2 aircraft per day and two of those seats have to be occupied by a mission coordinator, therefore it is imperative that everyone be trained as a MC as a matter of course.
4. The recognition of different types of vessels and situations that require notification and reporting under the terms of contract is a fundamental MC

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responsibility. Together with a detailed knowledge of the contract and the best practices in which to adhere to it are the measure by which an MC is valued. Each year of experience increases the:

- a) Knowledge of the contract and work requirements;
  - b) Knowledge of the reporting requirements,
  - c) Knowledge of the use of the computer systems;
  - d) Knowledge about fault finding of those computer systems and other technical systems;
  - e) The personal networks of the Aircrewman with individuals within the client agency and also within the company to resolve issues;
  - f) Experience in managing surveillance missions;
  - g) Knowledge and experience about keeping aircraft systems maintained and running.
5. The networking is more important than would be in a usual sense because liaising with all of the right people is necessary to ensure missions can be completed with satisfactorily working equipment and system. The longer you are in the job, the greater the rapport with the client agency.
6. The integrity of the reporting is particularly important in the work that we do. The history of accurate and reliable reports received by the client agency from a particular Surveillance Aircrewman / Mission coordinator is an important factor in assessing the integrity attributed to the report. There is a big difference between someone who is new as compared to someone who has experience.

7. There are times when there may be issues that arise, which if not addressed early can lead to loss of revenue for the company. For example, if something is faulty, like the FLIR (Forward Looking Infra-Red) or a radio, if something on the FLIR is not operating correctly, an Inexperience Mission Coordinator may delay or stop the mission when it is not necessary. A more Senior Missions Coordinator would be better equipped to assess the optimum way to address the issue while minimizing any delays in departure time (“wheels up”). A Senior Mission Coordinator is more likely to identify potential issues and have them addressed in an optimum manner than a more junior mission coordinator.
8. There are always curly issues which come up which we have to make a call about how we deal with those issues, find the right technical person or information to fix or work around the problem in order to maintain our dispatch reliability.
9. I have not worked in a role other than surveillance so cannot comment on the experience gained through years of service by other Aircrew.
10. At Babcock, there is an annual increment going up to 15 years under the Babcock Mission Critical Services Australasia Aircrew Enterprise Agreement 2016 (Babcock Enterprise Agreement 2016).

#### **Fitness Allowance**

11. There is no fitness level required of Surveillance Aircrew other than the Class 2 Medical. I don't know what the arrangements are for other Aircrew.

#### **Indemnity**

12. I don't have any experience or knowledge about this issue. However, there is an Employee Liability clause in the Babcock Enterprise Agreement 2016 at clause 17.

### **Accident Insurance**

13. Accident insurance, which covers life and total and permanent disability insurance is provided for by the Babcock Enterprise Agreement 2016 at clause 15.

### **Income Protection**

14. Income Protection is provided for by the Babcock Enterprise Agreement 2016 at clause 16.
15. I had been seeking income protection insurance privately for myself for a number of years and had not been able to obtain income protection from any provider. It was impossible to obtain income protection individually because no provider would want to issue a policy to me as someone who worked aviation.
16. There was one insurer who said that they could do it if the company I worked for contact them and brought the entire workforce superannuation over to them and they may be able to do it as a big package deal. This meant that I was unable to obtain income protection insurance until Babcock included it in the Babcock Enterprise Agreement 2016.

### **Accident Make-up Pay**

17. Accident make-up pay is provided for by the Babcock Enterprise Agreement 2016 at clause 18.

### **Upper Respiratory Tract Infection (URTI Leave)**

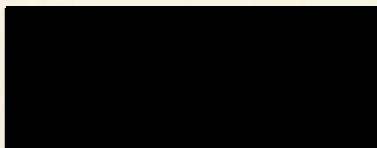
18. A requirement for people with URTI to attend for work is very short sighted, because it would spread the infection. Many URTI's are easily transmittable and contagious and therefore should be away from the workplace so as not



### **Annual Leave and Public Holidays**

20. As I indicated in my 19 September 2017 earlier statement, the company says that 42 days is equivalent to only one 15 day tour per year. This is an issue for us because our tour is 15 days on, 13 days off, 15 days on and 13 days off. When we take the 42 days annual leave the company requires us to take the leave beginning on the 13 days off, which will take us through the 15 days on and a second 13 days off, which amounts to 41 days. The 42<sup>nd</sup> day gets rolled over.
21. We work up to 14 ordinary hour days that are not paid at overtime, so converting the 15 days of 12 - 14 hours into hours amounts to 180 hours – 210 hours, which is much less than 6 weeks of 38 hours, which should be 228 hours.
22. If we finish 12 hours I am still required to be on-call on standby for the two hours. During this on-call on standby time we are not allowed to drink alcohol or to go too far away or be otherwise out of contact in case we are required.
23. It would be unfair to roll in Public Holidays in the context of how Babcock is applying the 42 days annual leave.

**END**



Stephen Ford

19 January 2018