

IN THE FAIR WORK COMMISSION

Matter No.: AM2016/3

Applicant: Australian Manufacturing Workers' Union (AMWU)

4 yearly review of modern awards – Proposed Helicopter Aircrew Award

Submission of Australian Federation of Air Pilots

Background

1. These submissions of the Australian Federation of Air Pilots (AFAP) are made in accordance with the Directions issued on 4 September 2019 by the Fair Work Commission (Commission) in respect of the proposed Helicopter Aircrew Award (Draft Award).
2. The AFAP represents the professional interests of all Australian commercial (professional pilots) other than those pilots employed within the Qantas mainline (international and domestic operations). The scope of pilots that the AFAP represents includes fixed wing airlines (regular passenger transport), offshore and onshore helicopters, aerial agricultural, all aspects of fixed wing and rotary wing general aviation, aero-clubs and flying schools.
3. The AFAP have provided two earlier submissions in relation to this matter on 28 December 2018 and 20 August 2019. This submission reconfirms that the AFAP remain opposed to the Air Pilots Award being varied to include the classifications of helicopter aircrew detailed in the Applicants submission and Draft Award.
4. The AFAP notes that the Applicant's original application and Draft Award was to specifically exclude, amongst other employees, those covered by the Air Pilots Award.

Legislative Framework

5. The power to create new modern awards during the review is found at section 156(2)(b), which operates subject to section 163(2) and section 134. Section 163(2) provides that the Commission must not make a modern award covering certain

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employers or employees unless it has considered whether it should, instead, make a determination varying an existing modern award to cover them. It is submitted that this exercise should be an exhaustive analysis, based on all available factual evidence and regard for the history and context of that contemplated existing award, and not merely entertained as a matter of convenience. We further submit that that bar ought to be higher when the contemplated existing award is an occupational award because the question of whether other occupational groupings ought to be covered by an occupational award has already been considered and determined by the Commission.

6. The purpose of section 134 of the Act is the creation of a 'fair and relevant minimum safety net of terms and conditions' that is constituted by the NES and modern awards. In arriving at this fair and relevant minimum safety net, the Commission takes into account those matters set out in section 134(1)(a)-(h) inclusive.
7. In undertaking their consideration of section 163 in relation to this application, the AFAP fully agrees with the Full Bench provisional Decision of 9 July 2019, as regards both the specialist characteristics of the helicopter aircrew and the necessity for helicopter aircrew to be in an Award other than the Miscellaneous Award.
8. In undertaking their consideration of section 163(2), the AFAP does not agree with either the Full Bench's summary regarding any purported similarities between helicopter pilots and helicopter aircrew or the Applicant's acceptance of such similarities as confirmed in their submission of 20 August 2018. This summary and confirmation by the applicant appears to have weighed heavily in the Full Bench's consideration of varying the Air Pilots Award in the first instance.

Helicopter Pilots

9. The AFAP notes with concern the numerous statements and comments regarding the similarity of duties, conditions, training and regulatory parameters between helicopter aircrew and helicopter pilots. These statements inaccurately attempt to detail similar, if not identical, work arrangements and conditions between the two groups.
10. The AFAP, through the provision of witness evidence from helicopter pilots attached within Appendix 1 of this submission, can show that there are in fact significant differences between helicopter pilots and helicopter aircrew. These differences exist in training, licensing, regulatory oversight, fatigue management, rostering, duties and responsibilities.

11. As a result of the evidence provided in this submission the AFAP contends that the assumptions upon which consideration was given to varying the Air Pilots Award are flawed. The AFAP seeks that reconsideration be given by the Commission into varying the Air Pilots Award to address the requirements of section 163(2).

The Air Pilots Award – An Occupational and Prescriptive Award

12. The AFAP contends that the scope of the Air Pilots Award has in its current Modern Award form (and within other instruments pre-dating the Modern Award) been accepted by the Commission, the AFAP, and industry employers as being of an occupational nature. It is noted that the Applicant has never asserted otherwise, including at the making of the Air Pilots Modern Award. Further, the AFAP is not aware of any changes in this consensus position since the making of the Air Pilots Award as a Modern Award. The AFAP is concerned that the Air Pilots Award is proposed now to be treated as a convenient option without regard to that history or context.
13. In our submission of 20 August 2019, the AFAP provided extracts from parties involved during the hearings associated with the establishment of the Air Pilots Modern Award in 2009. Those extracts whilst not requoted here remain relevant to this matter. In particular, the extensive consultation that took place at the time was recognised by the Full Bench in their Statement of 22 May 2009:

“Because air pilots are a discrete type of employment it is not convenient to combine terms and conditions with those applying to other categories of employment under one award. The parties to existing awards have been involved in extensive consultations on the terms of a single award for pilots.”

14. Witness evidence supplied within Appendix 1 also addresses problems associated with the limited scope of employment classifications to be covered by the AMWU’s Draft Award. As a result of representing pilots in a wide range of aviation related roles, the AFAP is aware of Aircrew employed in Australia who undertake a range of different duties that are closely associated in terms of skills, training and conditions of employment to helicopter aircrew. These include the classifications of Observers (whether Visual or Electronic), Mission Coordinators (including Electronic Coordinators) and Drop Masters operating in search and rescue and surveillance operations (hence Cobham Aviation Services’ late interest in the matter), Calibrators or Flight Inspectors, Aerial Surveying, Aerial Photography, Loadmasters and others.

This group of employees could be generically described as aircrew who are not only employed on helicopters.

15. Adding to the complexity of the array of personnel akin to aircrew, or whom at least operate from the rear end of an aircraft, in both rotary and fixed wing medical services such as Royal Flying Doctor Services (RFDS) are medical (doctors) and nursing personnel. In terms of the application helicopter EMS aircrew (which is not RFDS) also function alongside medical and nursing personnel in EMS operations. However, the medical and nursing personnel, like the pilots, are recognised by the Commission as appropriately being covered by an occupational modern award (the Nurses Award and Medical Practitioners Award).
16. The AFAP notes that the exclusion of a cohort of aircrew working in various fixed wing (aeroplane) operations could result in employees employed as aircrew being covered by differing awards. The aeroplane aircrew remaining within the Miscellaneous Award and the helicopter aircrew as a schedule to a current award, or under the Draft Award.
17. The approach to arbitrarily limit the scope of any proposed variation or new modern award to helicopter aircrew employees alone, runs directly contrary to the long-established rationale of the Air Pilots Award covering the entire cohort of a distinct occupationally based group of workers. The occupational grouping of all pilots has been clearly delineated many decades ago, culminating in pilot specific Awards in the past and the current single modern Award.
18. The inclusion of a separate part-occupational group which is unaligned historically with pilots and who, as the attached witness evidence details, are fundamentally different in all major aspects of their relative duties, will not only complicate and confuse the current understanding and application of the Air Pilots Award, but also unravel the historical understandings behind it.
19. Witness evidence is also attached within Appendix 1 that identifies unique and prescriptive clauses that are standard within the Air Pilots Award on the basis that it is an occupational award. The evidence confirms that their inclusion within the Pilots Award on 2009 was achieved on a consensus basis.
20. In the Commission's Decision of 8 July 2019, specific conditions of the proposed Draft Award were identified as not suitable for a Modern Award including 'service increments, allowances, hours of work and leave entitlements'. Witness evidence

provided confirms that these specific elements identified by the Commission are in fact basic elements of the Air Pilots Award.

21. The AFAP also notes that many of the elements identified within the Draft Award have been objected to within employer submissions. The AFAP evidence provided confirms that many of terms objected to are also standard in the Air Pilots Award.
22. Varying the Air Pilots Award as is being contemplated is effectively, and by definition, recasting it not as an occupational award, but as an industry award where based on the premise before the Commission any aviation related occupational classification not covered by an award, other than the miscellaneous award, will simply be annexed to what was once the Air Pilots Award for convenience reasons. Pilots are at risk of being exposed to having those unique terms and conditions (determined to be appropriate for the Air Pilots Award, as detailed above) undermined.
23. The extensively prescriptive nature of the Air Pilots Award, coupled with the differences existing between the roles, responsibilities, training and regulation of pilots and aircrew, will mean that the likely outcome of the current proposal would be to isolate the conditions enjoyed by pilots, from those the Commission would deem suitable for inclusion in a modern Award for helicopter aircrew. The AFAP believes that as the minimum safety net for pilots and aircrew are significantly different, the logical conclusion of such an exercise would be the need to create an 'award within an award'.
24. The AFAP has real concerns that attempting to accommodate two different safety nets within the one award (and potentially any number of others), while simultaneously moving away from the occupational basis of the Air Pilots Award, presents a future risk to pilot specific clauses being placed in jeopardy.
25. The movement from an occupational award to include another part occupation may undermine the clear understanding and consensus for those currently party to the Air Pilots Award. Parties to a potentially varied Air Pilots Award could reasonably question the rationale for moving from an occupational specific award and also quite reasonably attempt to simplify and unify enterprise bargaining agreements. It is through such a process that relevant safety nets may become impacted or removed and potentially place pilot specific terms in jeopardy
26. Having provided evidence and detailed the AFAP's ongoing concerns, this submission returns to section 134 of the Act and submits that further consideration by the

Commission should apply when reviewing whether varying the Air Pilots Award to include helicopter aircrew still meets the Modern Award objectives detailed within section 134(1)(a)–(h) inclusive.

Consideration of Section 134(1)(a)-(h)

27. Sub paragraph (a): The AFAP contends that the witness evidence provided confirms that the relativities between helicopter aircrew and pilots are limited. There is little to no career, training, or regulatory correlation existing between the two groups. The potential retention of aeroplane aircrew within the Miscellaneous Award would also undermine any current relativities existing for the complete aircrew occupational group (helicopters and aeroplanes). The AFAP also fears that attempting to establish two minimum safety nets within the one Award could potentially jeopardise the retention of pilot specific clauses that have been agreed by all parties when establishing the Modern Award.
28. Sub paragraphs (b) and (c): The consideration to vary the Air Pilots Award should not impact either the encouragement of collective bargaining or promotion of social inclusion.
29. Sub paragraph (d): The potential confusion that could arise from departing from the current entire occupational award for pilots into covering another part-occupation for helicopter aircrew may negatively impact the retention of pilot specific clauses. The AFAP has concerns that parties to a varied award in the future may reasonably seek to promote flexibility and modern work practices based on either one occupational group or the other, to the detriment of either or both occupational groups.
30. Sub paragraph (da): The four respective aspects covered within this sub paragraph are currently addressed or omitted within the Air Pilots Award. For example the matter of overtime is not addressed at all within the Air Pilots Award. The matters of hours of work are quite uniquely addressed as they are based on limitations prescribed by Civil Aviation Orders as regards fatigue. In seeking to address these aspects within their Draft Award the applicant has reasonably and necessarily, had to address the particular work arrangements that apply to helicopter aircrew but not pilots. The logical consequence when therefore applying consideration of this sub-paragraph for two discrete occupational groups will be the necessity to provide two safety nets within the one award.

31. Sub paragraph (e): The AFAP notes that no work has been undertaken to review the comparable value of work for pilots and aircrew. It would be reasonable to assume that if the Commission chose to vary the Air Pilots Award that a party will seek at some point to undertake such a review. If the current proposals for a helicopter aircrew award/variation were to progress it would also be reasonable to predict that those aircrew currently excluded from this process will also seek to review their respective work value with helicopter aircrew.
32. Sub paragraph (f): The AFAP notes that the impact on business in reviewing the draft Award, has been and is currently still disputed between the parties to the original application. The AFAP would reconfirm that parties to the current Air Pilots Award, which includes Cobham Aviation Services, a late intervener, reached a consensus position in the establishment of the Air Pilots Award, including that the Award ought to be an occupational award. The clear regulatory oversight that the AFAP witness evidence confirmed only applies to pilots, could become confused and muddled should a part occupational group be included to the Air Pilots Award who are not subject to such same regulation.
33. Sub paragraph (g): The AFAP believes that the most significant negative that could arise from varying the Air Pilots Award will be departure from the current well understood basis that the Air Pilots Award has been and is a clearly occupational based award. To include a part occupational group on the basis that the two groups work within the same aircraft without establishing regulatory, training, or work practice similarities will undermine that clear and well-established understanding. While it has never been appropriate to describe the Air Pilots Award as simple, it is clearly and uniquely prescriptive to accommodate the discrete type of employment in being a pilot. Moving away from that occupational nature of the Air Pilots Award will cause confusion as the varied award will have to address two minimum standards within the one award. In addition, unsustainability may arise as those aircrew currently excluded from the review process seek to address any inequality that may arise as a consequence of their exclusion.
34. Sub paragraph (h): The AFAP believe this sub paragraph will, in all likelihood, remain relatively unaffected by the Commission's current consideration of varying the Air Pilots Award. It is noted that sustainability, performance and competitiveness have been addressed in part during submissions from employer organisations into the applicant's Draft Award.

Retention of Occupation Awards for Employees within Aircraft

35. The establishment of modern awards (and their antecedents) for employees working within the body of an aircraft has clearly recognised the ongoing difficulties of grouping such discrete employees.
36. The Full Bench Statement quoted within paragraph 13 of this submission, confirmed that it was '*not convenient to combine terms and conditions with those applying to other categories of employment under one award*'. The AFAP contends that the circumstances that led to such a statement still remain. For the reasons outlined here the AFAP also believes the objectives of the Modern Award that must be achieved when undertaking a review process, will not be achieved through varying the Air Pilots Award to incorporate another part occupational group.
37. During the Modern Award submissions Qantas, as the largest single employer of pilots within Australia made two specific and relevant comments in relation to occupational awards for those employed within the body of an aircraft:

"...pilots are a distinct occupational group with unique and complex working arrangements mandating a separate occupational award. All relevant stakeholders have proposed a separate occupational award for pilots."

"Flight attendants also have unique and complex working arrangements. Although they are also flying positions, the hours of work and terms and conditions are quite different from those of pilots, in particular because hours of work for flight attendants are not determined by CASA regulation. Accordingly, a separate occupational award is required for these distinct occupational groups."

38. To progress this current application the AFAP maintains that, to date, those working within the body of aircraft have retained an occupational award status. An example of that is the *Aircraft Cabin Crew Award 2010*. The AFAP considers that, to ensure the objectives of section 134(1) are comprehensively met, the retention of discrete occupational awards for those classifications of employees working within the body of an aircraft should continue.

Date: 4 October 2019

Appendix 1

- a. Statement of David Croal
- b. Statement of Matthew Nielson
- c. Statement of Julian Smibert
- d. Statement of David Stephens



Commonwealth Consolidated Acts

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CIVIL AVIATION ACT 1988 - SECT 20AB

Flying aircraft without licence etc.

(1) A person must not perform any duty that is essential to the operation of an [Australian aircraft](#) during [flight](#) time unless:

(a) the person holds a [civil aviation authorisation](#) that is in force and authorises the person to perform that duty; or

(b) the person is authorised by or under the regulations to perform that duty without the [civil aviation authorisation](#) concerned.

Penalty: Imprisonment for 2 years.

(2) A person must not carry out [maintenance](#) on:

(a) an [Australian aircraft](#); or

(b) an [aeronautical product](#) in [Australian territory](#); or

(c) an [aeronautical product](#) for an [Australian aircraft](#);

if the person is not permitted by or under the regulations to carry out that [maintenance](#).

Penalty: Imprisonment for 2 years.

(3) Nothing in [subsection](#) (1) or (2) limits the power to make regulations under this Act that [provide](#) for an offence of undertaking another activity without the appropriate [civil aviation authorisation](#) or special authorisation under the regulations.

(4) In this section, [flight time](#) has the same meaning as in the regulations.



Australian Government
Civil Aviation Safety Authority

Instrument number CASA 132/16

I, SHANE PATRICK CARMODY, Acting Director of Aviation Safety, on behalf of CASA, make this instrument under subregulation 215 (3) and paragraph 226 (1) (c) of the *Civil Aviation Regulations 1988 (CAR 1988)* and subregulations 11.056 (1), 11.160 (1) and 11.205 (1) of the *Civil Aviation Safety Regulations 1998*.

[Signed S. Carmody]

Shane Carmody
Acting Director of Aviation Safety

22 December 2016

Helicopter aircrew member — authorisation, exemption and directions

1 Duration

This instrument:

- (a) commences on the day after registration; and
- (b) is repealed at the end of 30 November 2019.

2 Definitions

In this instrument:

aircrew member has the meaning given in *Civil Aviation Order 82.6 (Night vision imaging system — helicopters) 2007*.

AVI40116 Certificate IV in Aviation (Aircrewman) means:

- (a) the training course of that name administered by the Australian Industry Standards Limited, as existing from time to time; or
- (b) any training course, approved in writing by CASA to replace the course mentioned in paragraph (a), as the replacement course exists from time to time.

operator means the holder of an AOC.

relevant day means the day 36 months after the day this instrument commences.

3 Application

This instrument applies to:

- (a) an aircrew member if assigned by an operator to occupy a control seat of a helicopter equipped with fully or partially functioning dual controls; and
- (b) an operator if it assigns an aircrew member to occupy a control seat of a helicopter equipped with fully or partially functioning dual controls.

4 Authorisation and exemption

(1) An aircrew member is:

- (a) authorised to occupy a control seat of a helicopter equipped with fully or partially functioning dual controls; and

- (b) exempt from paragraph 227 (2) (a) of CAR 1988.
- (2) The authorisation and exemption are subject to the conditions mentioned in section 5.

5 Conditions

- (1) The aircrew member must not occupy the control seat of the helicopter during flight time unless the aircrew member is carrying out 1 or more of the following duties:
 - (a) assisting the pilot in command in monitoring the flight path of the helicopter for the purpose of avoiding a collision;
 - (b) assisting the pilot in command in selecting a landing site for the helicopter;
 - (c) detecting obstacles during take-off and landing of the helicopter;
 - (d) providing assistance to the pilot in command of the helicopter in relation to tasks associated with navigating the helicopter, radio communication or turning on or off and tuning and identifying radio navigation systems;
 - (e) assisting the pilot in command with requirements relating to checklists for the helicopter;
 - (f) assisting the pilot in command with the monitoring of the helicopter systems and instrumentation.
- (2) The aircrew member must:
 - (a) meet the operator's requirements for aircrew member training, including as provided by any training and checking organisation approved for the operator under regulation 217 of CAR 1988; and
 - (b) not act as a pilot of the helicopter; and
 - (c) not make a transmission on a radio frequency of a kind used for the purpose of ensuring the safety of air navigation unless the aircrew member is qualified for the purpose of regulation 83 of CAR 1988; and
 - (d) if the relevant day has passed — hold:
 - (i) a certificate or statement of attainment evidencing satisfactory completion of AVI40116 Certificate IV in Aviation (Aircrewman); or
 - (ii) written evidence, as reasonably required by CASA, of the completion of an equivalent military or overseas qualification approved in writing by CASA.

6 Directions

An operator that assigns an aircrew member to occupy a control seat of a helicopter equipped with fully or partially functioning dual controls must ensure that:

- (a) a copy of this instrument is included in the operator's operations manual; and
- (b) the operator's operations manual includes policies, a risk assessment, management instructions, standard operating procedures, and training and checking procedures to ensure that the duties mentioned in paragraphs 5 (1) (a) to (f) are carried out safely; and
- (c) the operator's operations manual includes procedures to ensure that the other requirements mentioned in this instrument are met.

FAIR WORK COMMISSION

Matter No.: AM2016/3

Applicant: Australian Manufacturing Workers' Union (AMWU)

WITNESS STATEMENT OF David Croal

I, David Croal of [REDACTED], state the following:

Employment Background

1. I am currently employed with CHC helicopters (CHC) and have been for 30 years. Currently operating an AW189 on Offshore Operations out of Karratha WA. I have 20 years of check and training experience with CHC and worked extensively in search and rescue (SAR) and emergency medical services (EMS) operations throughout my Career flying Dual Pilot SAR and Single Pilot EMS on the Bell 212/412, Sikorsky 76 and AW139. (RAAF/ARMY/NAVY-SAR, NSW Ambulance, VIC Ambulance and WA RACQ)
2. Prior to CHC I flew SAR, EMS and fire-bombing operations for the National Safety Council of Australia for 3 years.

Helicopter Pilot Licensing, Training, Checking and Medicals

3. Having read the decision of the Full Bench of 8 July 2019, I note that the proposal to potentially vary the Air Pilots Award was based on the view of the Full Bench that there were many listed similarities between pilots and helicopter aircrew. The listed similarities contained within part [70] of the decision are in many instances inaccurate and my comments within this statement are an attempt to highlight those differences.
4. Helicopter pilots in most cases would take a minimum of 12 months to obtain a basic Commercial Helicopter Licence involving a minimum of 105 hours of flying and 7

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commercial exams. Generally, a pilot would then gain further experience over the next 3 to 10 years flying single engine aircraft prior to moving into a Co-Pilot position in a multi engine instrument flight rules (IFR) helicopter. Prior to attaining this position, a pilot would require further instrument training involving a further 40 hours of flying, instrument rating theory exam and have completed ATPLH (airline transport Helicopter exams). Additionally, a pilot would receive a further 40 hours in the sim and 10 hours on the new multi engine aircraft prior to being cleared to the line.

5. Dependent on the career path a pilot could expect to have gained enough experience for single pilot IFR EMS operations after 10-15 years of flying experience. At that point a pilot would have attained a Commercial Helicopter Licence, ATPLH, instrument rating and night vision goggles (NVG) accreditation, which would be achieved through a total of 15 CASA legislated exams, NVG exam and several type rating exams. Initially pilots with a basic commercial licence would do an annual flight checks, once attaining a multi engine endorsement/operations you would have to undertake on average 5 check flights per annum. Failing any of these checks would preclude you from operations until such time that you had received remedial training and subsequently passed the check flight.
6. Pilots must pass an annual crew medical to ATPL standard for multi engine helicopter operations. Any medical condition not meeting the standard would see the pilot off duty until recovery from the medical condition. Any illness that precludes a pilot from flying for a period of greater than 7 days requires a Designated Aviation Medical Examiner (DAME) clearance prior to a return to work.
7. An aircrewperson requires a medical to confirm a level of health/fitness to work however does not require an aviation medical. Some company's call for a class 2 medical for aircrewpersons, which requires a bi-annual check to a lessor standard. As this is not a mandatory requirement there is no onus to be cleared back to work by a DAME after an illness of 7 days or greater.
8. Aircrewpersons have no formal licencing requirements. CASA expects each operator to provide a syllabus of training with prerequisites to meet prior to being cleared to the line in their respective role; Rescue, SAR and EMS aircrewperson. Therefore the training provided and standard required may differ markedly. Pilot licences are established through legislation which sets a minimum standard and accreditation required for the licence to be awarded and retained. For example, CHC's syllabus of training consists of the following:

Rescue aircrewperson; entry level with no prior experience; 15 hours of flight training + additional ground training.

Day aircrewperson; 2-3 years experience as a rescue aircrewperson, an additional 13 hours of Flight training and additional ground training.

Day/night aircrewperson; additional 1 year experience, an additional 15 hours of flight training and additional ground training.

EMS aircrewperson; once gaining approximately 2 years as an aircrewperson additional ground training with minimal flight training (5 Hours) would be conducted.

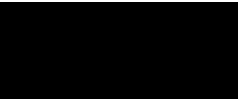
9. The Crewman would get a basic overview of the GPS navigation system, radio tuning, and checklist procedures to assist the pilot. Clearance to the line does not guarantee a crewman is highly proficient in some of the non-flying pilot duties normally carried out by a second pilot, only that they have an overview. Reliance is upon the pilot who has been checked to a standard of single pilot and whom is proficient in those duties. If a second pilot occupied the front left seat and was unable to input a required sequence to the navigation system the Captain would be able to handover flying duties to the second pilot whilst the Captain carried out the required navigational duties. A crewman is precluded from manipulating the controls in accordance with the Civil Aviation Act and Regulation (attached). Therefore the Captain would not be able to handover control to the Crewman whilst he made the necessary navigational inputs.

Helicopter Pilot Rostering, Fatigue and Duties

10. All pilots are required to be rostered within the legislated flight and duty requirements under the Civil Aviation Order 48.1 (CAO) or exemptions. Pilot rosters are generally set around 12 hour periods ie; 2 days – 2 nights 4 off, to meet duty and fatigue limits. If a pilot exceeds his duty limit an extended period of time off would be required prior to recommencement of duties. There are maximum flying and duty limits that must not be exceeded by the pilot or the company. If a pilot knowingly exceeded these limits, for reward or commercial pressure for example, they could be subject to a financial penalty for breaching the Order.
11. Aircrewperson are rostered for convenience and smoother operations. They regularly work a roster involving 24 hour periods and accept overtime beyond the flight and duty limits set for pilots. Companies roster aircrewperson on 24 hour shifts and do allow shift extensions with overtime payments. This approach enables an economic and flexible operational approach for the Company as regards aircrewperson. This is in distinct

contrast to rostering pilots, where a company has to meet the cost and clearly defined rostering of a legislated safety net, designed to ensure minimum fatigue for pilots.

12. Aircrewperson have specific roles dependant of the type of operation in which they are employed, as do medical staff who are assigned to the same operations. All those within the aircraft (Pilots, Aircrewperson, Doctors, Paramedics) provide assistance at times to the overall safety of any mission they carry out as a crew. However, the flying of and responsibility for any flight/mission rests solely with the Pilot/s to fly the aircraft from one place to another.
13. With multi flight crew pilot operations, the First Officer would have a 'must know' knowledge of all systems, be capable of operating all systems and be capable of rendering assistance throughout all phases of flight, including flying the aircraft. Aircrewpersons on the other hand, 'if' in the front seat of an aircraft, have a 'nice to know' knowledge and at no stage of any flight, fly the aircraft.
14. Considering the career paths, lack of legislative requirements and guidance with respect to minimum standard, duty and fatigue limits, crewman other than being in the same airframe on the same flight do not meet the context of similar role of a pilot that would logically place aircrewperson into the same professional award.
15. During my career I have worked on the NSW ambulance contract, Victorian Ambulance contract and the West Australian RACQ equivalent contract. All these contracts are operated single pilot IFR day night operations, with a company aircrewperson who occupied the front left pilot seat, the other crew members were employed by the organisation who contracted the Helicopter service.
16. On each operation the standard varied markedly for each aircrewperson based on their experience within the specific role, their system knowledge and their enthusiasm to assist in non-flying pilot duties. At best they could read checklist, change aviation radio frequencies, enter flight plans and other navigational inputs to the GPS/FMS, monitor flight performance and provide visual clearance on the left side of the aircraft. At worst they would operate client radio and give visual clearance on left side of the aircraft, providing no greater assistance to the pilot than had they been positioned in the rear cabin.



David Croal
3 October 2019

FAIR WORK COMMISSION

Matter No.: AM2016/3

Applicant: Australian Manufacturing Workers' Union (AMWU)

WITNESS STATEMENT OF Matthew Nielsen

I, Matthew Nielsen [REDACTED], state the following:

Employment background

1. I am currently employed as a full time Search and Rescue pilot for a civilian contractor in support of the Royal Australian Airforce.
2. I have previously been employed in the oil and gas helicopter industry for approximately 15 years during which time, I was qualified as a Limited Search and Rescue (LIMSAR) commander with the support of professional Technical Aircrewmen (TCM).
3. I am currently the Chairman of the Helicopter Council of the Australian Federation of Air Pilot (AFAP). The AFAP represents the interests of over 700 Australian helicopter pilots.
4. I am currently the Chairman of the Helicopter Committee (HELCOM) of the International Federation of Airline Pilots Associations (IFALPA). IFALPA is a peak safety and technical organisation that works with the global regulator, the International Civil Aviation Organisation (ICAO), to produce safety and technical material and guidance for the purposes of achieving the highest possible standards of aviation safety.

Helicopter Pilot Licensing, Training, Checking and Medicals

5. I have made myself familiar with the submissions of both the AFAP and the AMWU to build a frame of reference for this submission. Noting the suggestions in the AMWU submission

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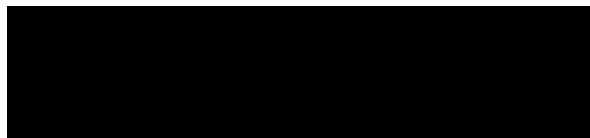
of 'equivalence' between helicopter pilots and aircrewpersons in the duties they perform, I state unequivocally that there is in fact no such thing. Pilots are professionals duly licenced under and responsible to the provisions of the Civil Aviation Act 1998, aircrewpersons, are not. My following submissions are also in response to section [70] of the full Benches Decision of 8 July 2019, which details what the Full Bench believes are similarities between the two occupational groups.

6. Pilots must achieve and maintain a standard of proficiency that is set by and overseen by the Regulator, the Civil Aviation Safety Authority (CASA). These checks occur throughout the lifetime of a pilots career and occur at 6 and 12 monthly intervals. Failure in any one of these checks can lead to the pilot losing their job should remedial action prove unsuccessful. Aircrewpersons may or may not have recurrent checks according to the requirements of their employer. The difference is that there is no single regulatory standard for technical crew members (TCM) and the roles are extremely varied even amongst themselves, let alone between pilots and TCM.
7. Pilots are required to maintain a CASA mandatory standard of medical certification as a part of their ability to fly commercially. This medical certification is provided through a specially approved Designated Aviation Medical Examiner (DAME). Failure to achieve certification can lead to a pilot licence being suspended and ultimately revoked. The medical checks must be obtained every 12 months (every 6 months over 60 years of age) with the burden of evidence to be provided to overcome a failed medical, resting with the pilot. Time required to overcome a failed medical can potentially and severely impact a pilots income which is why the Loss of Licence Insurance cover contained within the Air Pilots Award is an essential requirement for a pilot. There is no such mandatory requirements for TCM. Some employers do mandate a lower standard of aviation medical standards for TCM's but this is employer rather than regulator driven.
8. Pilots are liable under the Civil Aviation Act for offences of strict liability in the event that Civil Aviation Regulations are contravened. For instance, improper instrument flight, night aerobatic manoeuvres, dropping of articles or low flying might all give rise to an offence under the Civil Aviation Regulations (CARs) resulting in 25 or more penalty units and other punitive licence restrictions or prosecution by the Regulator. CASA may exercise no equivalent oversight over TCMs given that they are not bound by the responsibilities of a Flight Crew Licence.

9. I note that it has been claimed that TCMs may conduct 'non-flying pilot (NFP) duties'. This is also erroneous as whilst TCMs may be trained in supporting licenced aircrew, they cannot conduct NFP duties as they are not part of the Flight Crew. NFP duties are interchangeable between flight crew but not TCM's and include such duties as radio calls, checklist use, flight planning, flight management system programming and aircraft systems management and monitoring.
10. Civilian pilots invest a period of 12 months of full-time effort and many tens of thousands of dollars in training and checking to achieve a basic level of professional licencing that allows commercial flying.
11. In many cases, this basic licence is often insufficient to be employable and requires an extended period working under supervision or another significant investment in advanced qualifications. For the most part, helicopter pilots will spend around ten years of concerted effort before being suitable to act as an aircraft captain in complex roles. This does vary according to role type. In my own case, I spent a year completing my Commercial Licence (CPL). I invested in another year of advanced training to complete an instructor qualification. I then spent three years as a flight instructor and basic commercial pilot before landing a role as a first officer in a large company. I then spent four years as a first officer before achieving command on a complex aircraft type. A TCM acting as a rescue crewman can be employed and working in the role without restriction inside of a period of weeks rather than years.
12. The claim that TCMs can be 'endorsed' under the Regulations is contrived or misunderstood. By its very nature, an endorsement under the Regulation is an endorsement on a Flight Crew Licence. As a winch commander for instance, I would hold a Low Level and Winching endorsement on my licence. A TCM has no licence and therefore cannot be so 'endorsed'. That is not to say that TCMs aren't highly trained using the guidance of the relevant Regulation but it is erroneous to claim equivalence.
13. ICAO assigns different roles according to licencing status. According to the ICAO Standards and Recommended Practices, a Flight Crew Member (FCM) must be a licenced person charged with duties essential to the operation of an aircraft. A Crew Member is defined as a person who is assigned duties on a flight but is not an FCM.

Helicopter Pilot Rostering and Fatigue

14. Licenced pilots must adhere to regulatory requirements concerning the management of and adherence to fatigue regulations. Fatigue is managed and must be in accordance with Civil Aviation Order (CAO) 48.1, which is only applicable to pilots and FCM's. Offences against the Regulations carry penalties for FCMs.
15. TCMs are not required to adhere to fatigue regulations and are therefore not liable for contraventions of the Regulations. TCMs may well be rostered on similar patterns of duty as pilots but this is for practical rather than regulatory purposes and claims of equivalence in rostering and duties are incorrect. TCMs will have hugely different roster patterns according to their various roles in emergency medical or surveillance activities etc.
16. FCM career progression is well established and requires that pilots can act in multiple roles on the aircraft. A first officer, whilst junior and subordinate to the aircraft captain, can fulfil all of the flying competencies required to safely complete a flight. A TCM may have sufficient knowledge to assist in some supporting roles but only licenced FCM's can operate the aircraft.
17. Whilst I am fully supportive of the notion of building a sensible set of minimum safe standards and industrial protections for TCMs, in my view the scope falls well outside of the specific focus of the Air Pilots Award. Any attempt to incorporate TCMs into the Air Pilots Award would prejudice the interests of licenced pilots by creating confusion and adding significant complexity and matters unrelated to the pilot profession into the Air Pilots Award.



Matthew Nielsen
3 October 2019

FAIR WORK COMMISSION

Matter No: AM2016/3

Applicant: AMWU

WITNESS STATEMENT OF DAVID STEPHENS

I, David Stephens of 132-136 Albert Road, South Melbourne, Victoria, state the following:

A. BACKGROUND

1. I am employed by the Australian Federation of Air Pilots (“**AFAP**”) as Senior Industrial Officer. I have been employed by the AFAP, and in this current role, since June 2006. Prior to 2006, and from 1989, I held various and similar positions with the Health and Community Services Union.
2. This witness statement is made pursuant to the Directions of Vice President Hatcher issued on 4 September 2019, in respect to an application by the Australian Manufacturing Workers Union (“**AMWU**”) in matter AM2016/3 to have a modern award made to cover only “crewmen” employed, ostensibly, within helicopter emergency medical services (“**EMS**”) operations (“**proceedings**”). Other parties to the proceedings to date have included CHC Helicopters and Babcock Helicopters, Northern Helicopter Rescue Services (“**Westpac**”), and Toll Logistics. Each of these operators provide helicopter EMS in various states throughout Australia. More recently Cobham Aviation Services (“**Cobham**”) have joined the proceedings. Cobham do not provide any helicopter or EMS services.

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3. Industrial staff within the AFAP are allocated portfolios based on an allocation of what is referred to under the Rules of the AFAP as Pilot Councils. There are currently nine Pilot Councils established under the Rules of the AFAP – Virgin, Jetstar, Tigerair, QantasLink Sunstate, QantasLink Eastern, REX, Cobham, Rotary (“Helicopter”), and National which comprises all companies not designated as a Council.
4. Relevantly for the purposes of the proceedings I am assigned the Helicopters Council, Cobham Council and, with respect to the National Council. I am also assigned from within the National Council Network Aviation, Alliance Airlines, Skippers Aviation, Airwork Personnel, Maroomba Aviation, Pearl Aviation, Skytrans Aviation, and BAE.
5. The scope of the proceedings extends to the AFAPs representation of pilots in the Helicopter Council.
6. The proceedings were initiated by the AMWU on 10 December 2014. On 15 May 2017, the AFAP sought confirmation from the AMWU that their application would not extend to Pilots. On 4 July 2017, the AFAP received assurances that the AMWU were seeking to ensure that the coverage of their application would exclude pilots. Also, on 4 July 2017, the AMWU submitted a revised coverage clause in these proceedings confirming their position.
7. On 28 December 2018, the AFAP wrote to the Full Bench as presently constituted putting the position of the AFAP that the AFAP does not support a variation to the *Air Pilots’ Award 2010* (“**Award**”) to accommodate the application.
8. On 9 July 2019, the Bench issued a provisional decision raising the prospect of varying the Award. The AFAP had not been heard on the question, and that is noted in the 9 July 2019 decision.

B. SUMMARY OF MAKING OF MODERN PILOTS’ AWARD

9. In addition to the above portfolios [4] I was also assigned, and had carriage of, the modern award making process throughout 2009/2010 leading to the making by the then Australian Industrial Relations Commission (“**AIRC**”) of the modern Air Pilots Award 2009 (“**Pilots’ Award**”). The Pilots’ Award was expressly made, by consent of the parties to the process and by order of the AIRC as an occupational award.

10. Prior to the Pilots' Award pilots were covered by a number of awards predominately relating to the type of airline service applicable to each operation. For example, General Aviation, Regional Airline Services, Aerial Agriculture and Helicopter Operations, as well as various enterprise awards. Those respective awards, relevant at the time of the modern award making process, were:

- *Aerial Agricultural Aviation Pilots Award 1999*
- *Helicopter Pilots (General Aviation) Award 1999*
- *Pilots' (General Aviation) Award 1999*
- *Regional Airlines Pilots' Award 2003*
- *National Jet Systems Pilots' Award 2002*
- *Qantas Short Haul Pilots' Award 2000*
- *Civil Aviation Safety Authority (CASA) Award 1996*

Other than the *Civil Aviation Safety Authority (CASA) Award 1996*, which was ostensibly a public sector award, all awards were designated pilot only awards – effectively occupational awards, including those enterprise awards.

11. At the time of the modern award making process, the participating parties were, with respect to the Unions, the AFAP and the Australian International Pilots Association (“AIPA”), and with respect to employer/operators the Qantas Group, Virgin Australia, Regional Airlines Association of Australia, Aerial Agriculture Association of Australia, and Cobham Aviation Services.

12. Neither the AMWU nor any helicopter operator (either individually or collectively) sought to be involved or to be heard or put any submissions to the AIRC in the modern award making process, including in response to any draft exposure (occupational) award issued by the AIRC for the consideration of parties, or the industry generally.

13. I have read the submissions filed by, and behalf of, the AFAP on 20 August 2019 in these proceedings and specifically the extracts of various parties' submissions supporting an occupational Pilots Award at that time. I can say that those statements reflect both the discussions between the parties at that time, including before the AIRC, and the submissions of the parties.

14. Subject to one caveat, at all times during the modern award making process all parties agreed that the AIRC ought to make an occupational award. The caveat was Cobham who in the initial proceeding only before Vice President Watson proposed a modern award covering cabin crew (not aircrew) and pilots. However, in the same proceedings Cobham recanted from that position and adopted the consent position of a Pilots' occupational award. Cabin crew employees are the beneficiaries of an occupational award.

C. THE AIR PILOTS AWARD – AN OCCUPATIONAL AND PRESCRIPTIVE AWARD

15. In the making of the Pilots' Award, the scope of the Pilots' Award (and pilot awards predating the modern award) was accepted by the AIRC and the industry (unions and employers) as necessitating an occupational instrument. The Applicant in these proceedings has never asserted otherwise, including at the making of the Pilots' Award. Further, the AFAP is not aware of any changes in this consensus position since the making of the Pilots' Award.
16. For example, in the deliberation of the making of the Pilots' Award that Full Bench said on 22 May 2009:

Because air pilots are a discrete type of employment it is not convenient to combine terms and conditions with those applying to other categories of employment under one award. The parties to existing awards have been involved in extensive consultations on the terms of a single award for pilots.

Other than the provisional decision of the Full Bench on 8 July 2019, this finding and statement has never been cavilled with.

17. I have read the 8 July 2019 decision, and the written submissions of particularly the Applicant that traverses the question of scope and note the extremely narrow understanding or recognition of the full scope of work and of employees who may also in a broad sense be characterised (although not classified) as "aircrew" working in the rear of not only helicopters but also fixed wing airplanes, and working not only in EMS operations.

18. The AFAP is aware of aircrew employed throughout the aviation sector who undertake a range of different duties that are closely associated in terms of skills, training and conditions of employment to helicopter aircrew. These include the classifications of Observers (Visual and Electronic), Mission Coordinators (including Electronic Coordinators) and Drop Masters operating in search and rescue and surveillance operations, Calibrators or Flight Inspectors, Aerial Surveying, Aerial Photography, Loadmasters, Fire and Shark spotters, System Operators such as Magnetometer Operators, Aerial Surveying, Aerial Photography, Loadmasters, and others.
19. Classifications of Observers, Mission Coordinators and Drop Masters are employed largely within Cobham Aviation Services operating the Border Force and Australian Marine Safety Authority search and rescue contracts, of which there are approximately 110-120 employees. Calibrators or Flight Inspectors are employed specifically to the Flight Operations contract provided by Pearl Aviation of which there are approximately six. Both Cobham and Pearl Aviation specifically operate fixed wing aircraft services, and no helicopter services.
20. Further, medical, nursing paramedic personnel also operate from the rear of aircraft – both helicopters (including within helicopter EMS operations alongside crewmen the subject of these proceedings) and fixed wing airplanes such as within the Royal Flying Doctor Services. I am aware that medical and nursing personnel, like the pilots, are recognised by the AIRC as appropriately being covered by occupational modern awards (the Nurses Award and Medical Practitioners Award). In fact, in support of an occupational award covering pilots, the AFAP at that time pointed to the fact that the AIRC had already determined that those occupations ought to be covered by occupational awards.
21. Similarly, within both fixed wing and rotary wing police air services/police air wing employees operate from the rear of the aircraft undertaking various roles including surveillance and search and rescue. The classifications are broadly classed Surveillance Operations Officers.
22. The final effect of aircrew only being covered as an appendage to a schedule to the Pilots Award to the exclusion of a cohort of “aircrew” working in various fixed wing and other rotary operations could result in comparable employees being covered by differing awards, in particular the Miscellaneous Award, while certain helicopter only aircrew are potentially appended to a schedule of the Pilots Award.

23. The AFAP is deeply concerned that appending one small group of a larger potential cohort to a schedule of the Pilots Award manifestly conflicts with the long-established rationale of the Pilots Award, and its predecessors, covering the entire cohort of a distinct occupationally based professional group. The occupational grouping of all pilots was clearly delineated many decades ago, culminating in pilot specific awards in the past and the current single modern Pilots' Award.
24. The terms of the Pilots' Award were arrived at in very large measure by consent. Many of those terms, although not considered as generally applicable to a modern award because of their prescriptive nature, were both agreed by the parties and accepted by the AIRC as being appropriate to a modern pilots' award and are in fact basic terms of the Pilots' Award. Examples of those terms not otherwise considered applicable for a modern award include obvious examples of: (a) annual service increments at schedule E.5.1 and schedule E.6.1 of the Pilot's Award, and specifically with respect to helicopter pilots, and (b) hours of work at clauses 24 – 26 inclusive of the Pilots' Award generally, but also schedule E.5.5 and schedule E.6.5 specifically with respect to helicopter pilots.
25. Further, a review of the Draft Award advanced by the Applicant in these proceedings includes many terms that are opposed by the employer groups, but are terms of the Pilots' Award by consent of the parties and order of the AIRC. These include:
- skills allowances comparable for example to that sought at clause 19.4 of the Draft Award (Other Required Additional Skill Certification Allowance) such as the ATPL allowance at schedule E.4.1 of the Pilots Award;
 - clause 19.9 of the Draft Award (Overseas allowance) compared to the Overseas duty allowance at clause 19.5 of the Pilots' Award;
 - clause 19.21 of the Draft Award (Telephone allowance) compared to the Telephone allowance at clause 19.6 and schedule E.4.2 and schedule E.6.4 of the Pilots' Award;
 - clause 19.24 of the Draft Award (Indemnity) compared to Pilot Indemnity at clause 22.12 of the Pilots' Award;
 - clause 19.26 of the Draft Award (Income protection insurance) compared to Loss of licence allowance at clause 19.4 of the Pilots' Award;

- clauses 25 (Hours of duty and days free of duty) and clause 26 (Multiple day tours) of the Draft Award, compared to clause 24 - Hours of work, clause 25 - Rostering, and clause 26 -Breaks of the Pilots' Award;
- clause 30 of the Draft Award (Annual leave) compared to clause 27 – Annual leave of the Pilots' Award;

26. The AFAP is concerned that by varying the Pilots' Award as is contemplated will have the effect of recasting it not as an occupational award, but as an industry award where based on the premise before the AIRC any aviation related occupational classification not covered by an award, or covered by the Miscellaneous Award, will simply be appended to another schedule of what was once the Air Pilots Award for no reason other than convenience. The AFAP is concerned that pilots risk being exposed to having those unique terms and conditions (determined to be appropriate for the Pilots' Award) undermined.

D. HELICOPTER PILOT LICENSING, TRAINING, CHECKING AND MEDICALS, ROSTERING, FATIGUE AND DUTIES

27. I have read the witness statements of Mr Matthew Nielson and Mr David Croal and agree with their contents. I have nothing further to add in terms of probative value going to the fundamental distinctions between the roles, training, regulatory and licencing requirements, and degrees of responsibilities between pilots and aircrew, other than to restate that passage [70] of the 8 July 2019 decision misrepresents the relationship between pilots and aircrew, or is otherwise inaccurate.



Name: David Stephens

Date: 27 September 2019

FAIR WORK COMMISSION

Matter No.: AM2016/3

Applicant: Australian Manufacturing Workers' Union (AMWU)

WITNESS STATEMENT OF PETER JULIAN SMIBERT

I, Peter Julian Smibert of [REDACTED] state the following:

Employment background

1. I am currently employed as a Safety and Technical Officer, in a part-time, capacity by the Australian Federation of Air Pilots. I have been in this position since July 2013. Prior to this I was employed by the Civil Aviation Safety Authority (CASA) as a Flying Operations Inspector between January 1996 and my retirement from CASA in August 2012. While with CASA my primary role was a helicopter specialist and my duties included entry control, auditing and flight testing of single and multi-engined helicopter operations including winching, rappelling and night vision operations as conducted by police and emergency service operators.

Helicopter Pilot Licensing, Training, Checking and Medicals

2. Pilots are required to hold licences, ratings and endorsements issued by the Civil Aviation Safety Authority under the provisions of various Acts and Orders. Similarly pilots are required to hold a medical certificate which, along with other qualifications, is required by legislation to be regularly re-assessed and re-validated. Failure to satisfy the required standard in any aspect may render the pilot unable to exercise the privileges of their licence until a satisfactory standard is achieved. These are in most cases regulatory requirements and are not subject to discretion.
3. These requirements are detailed in Part 61 of the Civil Aviation Safety Regulations (1998) and failure to comply with them may render the pilot liable for a penalty of up to two years imprisonment under the Section 20 AB of the Civil Aviation Act (1988).

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4. Helicopter crewmen, while they may perform a mission critical role, are not licenced rated or endorsed by the regulator. Some may hold approvals from the regulator, while others may require a certificate of competency issued by an approved person, these certificates and approvals are generally operator specific and if so are not transferable between employers.
5. Under these circumstances although the crewman's experience may be relevant to a new employer the crewman will require re-certification if moving to a new employer. One certificate which may be held by a crewman which is transferable is an Aeronautical Radio Operator Certificate of Proficiency which is issued under CASR part 64.
6. In this respect helicopter crewmen are similar to flight attendants, both of which are highly trained and certificated to perform mission critical, aviation safety functions, yet neither of which hold CASA issued licences as such.

Helicopter Pilot Rostering and Fatigue

7. Pilots flight and duty parameters and limitations are set out in Civil Aviation Order 48.1 instrument 2019, and pilots and operators are required to comply with these requirements. Under the definitions these orders apply to flight crew. A flight crew member is defined as;

*Under Part 1 of the CASR Dictionary, **flight crew member** means a crew member who is a pilot or flight engineer assigned to carry out duties essential to the operation of an aircraft during flight time. Any reference to **flight crew** has a corresponding meaning.*

8. While no specific penalties are specified in the Order for non-compliance, Civil Aviation Regulation 1988 - 21A, specifies a penalty of 50 penalty units for failure to comply with a CASA direction with regard to flight time limitations.
9. Helicopter crewmen however do not fall under the definition of flight crew and consequently are not required to comply with these rules, although many operators choose to apply these rules to crewman's rosters, for convenience and safety reasons. Failure to comply with the operator's instructions could render the crewman liable to the lesser penalty of 25 penalty points under Civil Aviation Regulation 1988 - 215(9).


Peter Julian Smibert

3 October 2019