



DECISION

Fair Work Act 2009
s.156—4 yearly review of modern awards

4 yearly review of modern awards - Proposed Helicopter Aircrew Award (AM2016/3)

Airline operations

VICE PRESIDENT HATCHER
DEPUTY PRESIDENT HAMILTON
COMMISSIONER SIMPSON

SYDNEY, 15 FEBRUARY 2022

Proposed Helicopter Aircrew Award – amendments to Air Pilots Award 2020 – provisional view – draft determination published for comment.

Introduction and background

[1] This decision finalises amendments to the *Air Pilots Award 2020* (Pilots Award) arising from the Australian Manufacturing Workers’ Union’s (AMWU) application, as part of the 4 yearly review of modern awards, to create a new modern award for helicopter aircrew.

[2] In a decision issued on 4 May 2020 (May 2020 decision),¹ we determined that it is appropriate for helicopter aircrew to be placed within the coverage of the Pilots Award and expressed provisional views as to how the award might be amended to accommodate such coverage.

[3] On 17 September 2021 we published a draft award for consultation purposes (September draft award)² reflecting the provisional views in the May 2020 decision. The September draft award was published in conjunction with a statement³ directing interested parties to confer and discuss the draft award.

[4] On 15 October 2021 a conference⁴ was convened before the presiding member, which was attended by the AWMU, the Australian Workers’ Union (AWU) and Babcock Mission Critical Services and CHC Helicopters (Babcock and CHC). Babcock and CHC had submitted a document summarising the parties’ comments on the September draft award⁵ prior to the conference. The summary of comments document outlined matters agreed between the parties as well as a number of additional proposed variations to the Pilots Award to accommodate

¹ [2020] FWCFB 2325.

² [Draft award for consultation purposes](#), 17 September 2021.

³ [2021] FWCFB 5505.

⁴ [Transcript of conference](#), 15 October 2021.

⁵ [Summary of comment document](#), 13 October 2021.

coverage of helicopter aircrew. At the conclusion of the conference parties were directed to file further submissions within 14 days from the publication of the conference transcript.

[5] After granting the parties' request for an extension of time the Commission received submissions from Babcock and CHC⁶ on 11 November 2021 and from the AMWU⁷ on 12 November 2021. On 15 November 2021 the AWU submitted that it supported the AMWU's submission.⁸

Summary of submissions

[6] The following amendments to the September draft award were agreed between the parties in the summary of comments document submitted on 14 October 2021:

- inserting "helicopter aircrewperson" and adding the Chief aircrewperson classification to the definition of helicopter aircrew at clause 2;
- correcting a reference in clause 7.4 with updated clause name for clause 23.9;
- removing the space between "air" and "crewperson" at E.3.3;
- including the additional qualifications allowances for helicopter aircrew set out in clause E.3.3 to the ordinary hourly and weekly rates at clauses E.3.4 and E.3.5;
- specifying that the mobile intensive care ambulance (MICA) allowance at clause E.4.2 is an all-purpose allowance;
- replacing the word "shall" with "will" and correcting the clause reference from clause E.3.2 to clause E.3.4 in clause E.7.2(b);
- correcting various cross reference errors in clause E.9.1 from clause D.5.6 to D.6.5; and
- inserting a default superannuation fund appropriate for helicopter aircrew at clause 22.4.

[7] Additionally, the following amendments were agreed between the parties during the conference of 15 October 2021:

- that the reference to "*a pilot*" in the definition of home base (employees subject to Schedules D or E) in clause 2 be changed to "*an employee*";⁹

⁶ [Babcock and CHC submission](#), 11 November 2021.

⁷ [AMWU submission](#), 12 November 2021.

⁸ [AWU submission](#), 15 November 2021.

⁹ [Transcript of conference](#), 15 October 2021, at PN125-130.

- that the references to pilots in clause 25.6 be changed to employees;¹⁰ and
- that default superannuation funds should be added for helicopter aircrew.¹¹

[8] In their submissions of 11 and 12 November 2021, Babcock and CHC and the AMWU addressed outstanding issues identified in the conference and raised other matters which we will address below.

Standard rates for allowances

[9] The AMWU withdrew their proposal that the night operations and overseas duties allowances contained in clauses 20.2(b) and 20.2(d) be re-drafted based on the standard rate applicable to aircrew.¹²

Potential conflicts with Schedule E

[10] During the conference the prospect was raised that certain provisions in the main body of the September draft award applying to helicopter aircrew may conflict or overlap with those contained in the proposed Schedule E.

[11] Babcock and CHC submit that clause 14, *Transfers* should not include a statement that it does not apply to helicopter aircrew, as that clause includes provisions that are not conferred in clause D.2 (which would apply to helicopter aircrew by virtue of proposed clause E.5). Similarly, Babcock and CHC submit that clause 15, *Hours of work, days off and rest periods* should not include a statement that it does not apply to helicopter aircrew as this clause includes provisions not conferred in clause D.6.5 (which would apply to helicopter aircrew by virtue of proposed clause E.9). Babcock and CHC also submit that such a statement should not be included in clause 16, *Rostering arrangements* as proposed clause E.7 appears to be silent on rostering arrangements.¹³

[12] The AMWU agrees with Babcock and CHC in relation to clause 14, and notes that in the event of inconsistency between provisions in the main body of the award and the proposed Schedule E, clause E.2 provides explicitly that the schedule will prevail.¹⁴ The AMWU also agrees that helicopter aircrew should not be excluded from clauses 15 or 16.

[13] Babcock and CHC have proposed that the accommodation and meal allowance at clause 20.3(a) should state that it does not apply to helicopter aircrew. Babcock and CHC submit that the relevant provisions in clauses D.5.6 and D.6.6 (which apply to helicopter aircrew by virtue of clauses E.8.2 and E.9.1) provide all intended entitlements to accommodation and meal allowances for helicopter aircrew.¹⁵ The AMWU agree that accommodation and meal

¹⁰ [Transcript of conference](#), 15 October 2021, at PN187-192.

¹¹ [Transcript of conference](#), 15 October 2021, at PN78-82.

¹² [AMWU submission](#), 12 November 2021, at paragraphs 6-7.

¹³ [Babcock and CHC submission](#), 11 November 2021, at paragraph 10(a)-(c).

¹⁴ [AMWU submission](#), 12 November 2021, at paragraph 23.

¹⁵ [Babcock and CHC submission](#), 11 November 2021, at paragraph 10(d).

allowances are provided for in Schedule E and are not opposed to an amendment to ‘carve out’ helicopter aircrew from clause 20.3(a).¹⁶

[14] Babcock and CHC propose that the telephone allowance at clause 20.3(d) states that it does not apply to helicopter aircrew, as all intended and relevant entitlements in respect of this are provided by clause D.4.2(b) (which applies to helicopter aircrew by virtue of clause E.4.6).¹⁷ The AMWU submission only seeks for helicopter aircrew to be ‘carved out’ of 20.3(a) and seek for such a carve out to be clear it does not apply to the entirety of clause 20.3.¹⁸ It is unclear whether the AMWU has a specific position in respect of helicopter aircrew being ‘carved out’ of clause 20.3(d).

Training bonds – clause 13.6

[15] Babcock and CHC and the AMWU both submit that clause 13.6, which concerns training bonds, should not apply to helicopter aircrew.¹⁹

Night vision goggles allowance – clause 20.2(c)(ii)

[16] The AMWU has proposed that if the night vision goggles (NVG) allowance for helicopter aircrew is an all-purpose allowance, it should be expressed as a weekly rate rather than hourly, or per annum as it is expressed for pilots in clause 20.2(c)(ii). The AMWU submits that this will simplify the task of calculating the ordinary hourly rate for helicopter aircrew (at clause E.3.4), which is based on the ordinary weekly rate (at clause E.3.5).²⁰ Babcock and CHC have reviewed the AMWU’s proposal and agree that the NVG allowance is an all-purpose allowance and do not object to it being expressed as a weekly allowance.²¹

[17] The AMWU has also proposed that the NVG allowance for helicopter aircrew be moved from clause 20.2(c)(ii), where it appears with the NVG for pilots, to Schedule E.²²

Proposed all-purpose allowances clause

[18] The AMWU has proposed the Pilots Award contain a clause listing all-purpose allowances in respect of helicopter aircrew.²³ The proposed clause lists additional qualifications – supervisory aircrewpersons allowances, the NVG allowance and the MICA allowance as all-purpose allowances. Babcock and CHC submit that they have reviewed the proposed clause and agree with the wording.²⁴

¹⁶ [AMWU submission](#), 12 November 2021, at paragraphs 33- 34.

¹⁷ [Babcock and CHC submission](#), 11 November 2021, at paragraph 10(e).

¹⁸ [AMWU submission](#), 12 November 2021, at paragraph 34.

¹⁹ [Babcock and CHC submission](#), 11 November 2021, at paragraph 9; [AMWU submission](#), 12 November 2021, at paragraph 35.

²⁰ [AMWU submission](#), 12 November 2021, at paragraphs 10-12.

²¹ [Babcock and CHC submission](#), 11 November 2021, at paragraph 7.

²² [AMWU submission](#), 12 November 2021, at paragraph 13.

²³ [AMWU submission](#), 12 November 2021, at paragraph 17.

²⁴ [Babcock and CHC submission](#), 11 November 2021, at paragraph 7(d).

Mobile intensive care ambulance allowance – clause E.4.2

[19] The AMWU has proposed a re-draft of clause E.4.2 relating to the MICA allowance.²⁵ The proposal expresses the allowance as a weekly amount, rather than the annual amount as it is expressed in the September draft award. The AMWU submits that if the Full Bench is minded to express all-purpose allowances as a weekly or hourly rate, it may be appropriate to do the same for the MICA allowance. Babcock and CHC agree with the AMWU's proposal.²⁶

[20] The AMWU's re-draft of clause E.4.2 does not specify that the MICA allowance is an all-purpose allowance, however the summary of comments document indicates that the AMWU previously agreed with Babcock and CHC that the MICA allowance is an all-purpose allowance, and that clause E.4.2 be amended to state this.²⁷ The MICA allowance also appears in the AMWU's proposed list of all-purpose allowances.

Consideration

[21] With some minor drafting modifications,²⁸ our *provisional* view is that we should adopt the changes to the September draft award agreed between the parties which participated in the subsequent consultation/conference process. In respect of clause 20.3(d), no 'carve out' of helicopter aircrew, as proposed by Babcock and CHC, is necessary because the provision is expressed as only being applicable to pilots.

[22] We have also made a number of amendments to the September draft award to reflect the adjustments to rates of pay and allowances in the Pilots Award which took effect on 1 November 2021 pursuant to the *2020-21 Annual wage review decision*.²⁹ The minimum wages for helicopter aircrew at clause E.3.2 have been updated in accordance with the *2020-21 Annual wage review decision*.

[23] In its submission that the MICA allowance be expressed as a weekly amount, the AMWU proposed the figure of \$67.36 per week. This figure has been updated in accordance with the *2020-21 Annual wage review decision*. Using the formula of 6.86% of the standard rate for helicopter operations—aircrew, the new allowance is \$69.01 per week.

[24] In its submission that the proposed NVG allowance for helicopter aircrew be expressed as a weekly amount, the AMWU proposed the figures of \$55.11 per week for rescue aircrewpersons and surveillance aircrewpersons and \$88.10 per week for aircrewpersons and surveillance mission coordinators. These figures have been updated by reference to the standard rate for helicopter operations—aircrew in accordance with the *2020-21 Annual wage review decision*. The new allowance is \$56.54 per week for rescue aircrewpersons and surveillance aircrewpersons and \$90.34 per week for aircrewpersons and surveillance mission coordinators.³⁰

²⁵ [AMWU submission](#), 12 November 2021, at paragraphs 14-15.

²⁶ [Babcock and CHC submission](#), 11 November 2021, at paragraph 7(b) and (c).

²⁷ [Summary of comment document](#), 13 October 2021, at page 1.

²⁸ Of most significance, the grandparenting date for choice of funds for pilots in clause 22.4(b) has been retained.

²⁹ [2021] FWCFB 3500.

³⁰ The formula of 291.99% of the standard rate in Schedule E per annum was used for Rescue aircrewpersons and Surveillance aircrewpersons and 466.77% of the standard rate in Schedule E per annum for Aircrewpersons and Surveillance Mission Coordinators. These values were divided by 52 to express the allowance as weekly.

[25] The figure in respect of the employer's obligation to provide accident insurance for helicopter aircrew contained in the proposed clause 21.11(b) has been updated in accordance with the increase to expense-related allowances.³¹

[26] A number of drafting amendments have also been made and some minor errors corrected in the draft award.³²

Next steps

[27] A draft determination reflecting the proposed variations to the Pilots Award outlined in this decision and the May 2020 decision will be published in conjunction with this decision. It is our *provisional* view that the variation of the Pilots Award in accordance with the draft determination is necessary to accommodate coverage of helicopter aircrew within the Pilots Award and that the variations are necessary to achieve the modern awards objective.³³

[28] An updated draft award will also be published along with this decision to assist the parties. It will be marked up in accordance with the proposed variations. The draft award incorporates all amendments to the Pilots Award finalised since the May 2020 decision, up to and including 1 November 2021.³⁴

³¹ [PR729489](#).

³² Removed capital letters from the definition of helicopter aircrew consistent with modern award styles; changed the name of standard rate in schedule E to standard rate for helicopter aircrew as the standard rate is not mentioned in schedule E; the word two has been replaced with number 2 consistent with modern award style; the word 'pilot' in the definitions of 'appropriate accommodation' and 'continuous service' in clause 2 has been changed to 'employee'; the word 'pilot' has been changed to 'pilots' plural to correct an apparent error in clause 15.8(k); the word 'and' inserted after the words 'CASA regulations,' in clause 19.3 which appears to have been omitted; added clause 20.2(c)(iii); added omitted substitutions of 'pilots' for 'employee' in clauses 20.3(b)(iii), 20.3(b)(v), 20.3(f), 20.3(g)(ii), 21.11(e); removed capital letter from helicopter aircrew for consistency in clause 21.11(b); removed superfluous word 'clause' in clauses 21.11(a) and 21.11(d); removed extra bracket and added full stop in clause 22.4(a)(i); inserted 'a' to correct grammar error in clause 22.4(c)(i); added the words 'or wage' to the end of the text in clause 23.5(b)(ii); an em dash has been added to the headings in Schedules D and E for consistency; removed capital letter from schedule in clause E.2 for consistency; capital letters for position names have been removed from position titles in E.3.1 consistent with modern award styles; replaced the word 'Crewperson' with the word 'Crew Officer' to make consistent with the AQF qualification title in E.3.1(b); in clause E.3.1(d) created a bulleted list of techniques for ease of reading, inserted the word 'and' between 'operations' and 'assisting', made 'Aircrowpersons' plural for grammar, replaced 'Aircrowperson' with 'Aircrowman' consistent with AQF qualification replaced the word 'Crewperson' with the word 'Crew Officer' to make consistent with the AQF qualification; changed the word 'wage' to 'rate' and added '(full-time employee)' to the minimum weekly rates column and added a column of minimum hourly rates to clause E.3.2 consistent with modern award styles; heading of clause E.3.3 changed from 'aircrowspersons' to 'aircrew'; inserted the word 'any' between the words 'and' and 'all-purpose' as it appears to have been omitted; divided clause E.4 into wage-related and expense-related allowances consistent with modern award style; lower cased the beginning of each subclause E.7.3(c) consistent with modern award styles; inserted semi-colon in E.7.3(c)(iii); replaced the word 'shall' with the word 'will' consistent with modern award style; expressed overtime rates as percentages and numbers as numerical digits consistent with modern award styles; added clause reference at clause E.7.2(c); inserted the phrase '(other than helicopter aircrew)' in G.1.1 to clarify that the night vision goggle allowance does not apply to aircrew; a table of monetary allowances has been included for helicopter aircrew in G.1.2; added the word 'appropriate' to the phrase 'standard rate' in G.2 to clarify that it might refer to either standard rate.

³³ *Fair Work Act 2009* (Cth), s 134.

³⁴ Including changes arising from the Casual terms award review 2021 ([2021] FWCFB 6008) and 2020-21 Annual Wage Review decisions ([2021] FWCFB 3500).

[29] Interested parties will have 10 days from the date of this decision to file any submissions in relation to the *provisional* view before the variations to the Pilots Award are finalised. Submissions must be sent to amod@fwc.gov.au.



VICE PRESIDENT

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