

**FAIR WORK COMMISSION**

**AM2016/3 – Proposed Helicopter Aircrew Award  
Four yearly review of modern awards**

**Supplementary submission on behalf of  
Babcock Mission Critical Services Australasia Pty Ltd**

1. This submission is made on behalf of Babcock Mission Critical Services Australasia Pty Ltd, formerly Australian Helicopters Pty Ltd (**BMCSA**), in accordance with the directions issued by the Fair Work Commission on 10 April 2018.
2. This submission concerns the amended draft proposed *Helicopter Aircrew Award 2010* (**Proposed Award**) in Attachment A to the submissions of the Australian Manufacturing Workers' Union (**AMWU**) dated 13 April 2018 (**2018 April Draft Award**). The 2018 April Draft Award differs in a number of respects from the previous draft of the Proposed Award dated 20 September 2017 (**2017 September Draft Award**).
3. This submission is additional to the submission lodged on behalf of BMCSA on 6 December 2017 (**2017 BMCSA Submission**). This is a supplementary submission to be read in conjunction with the 2017 BMCSA Submission.
4. BMCSA and the AMWU have subsequently reached a common position on some of the clauses in the Proposed Award, including some clauses previously opposed. This is explained further below.
5. BMCSA objects to a number of terms in the 2018 April Draft Award as currently drafted. These include:
  - (a) Clauses 19.4 (Other Required Additional Skill Certification Allowance);
  - (b) Clause 19.5 (Fitness Allowance);
  - (c) Clause 19.9 (Overseas Allowance);
  - (d) Clause 19.21 (Telephone);
  - (e) Clause 19.24 (Indemnity);
  - (f) Clauses 19.26 (Income Protection Insurance);
  - (g) Clauses 25 (Hours of duty and days free of duty) and 26 (Multiple day tours);

Lodged on behalf of:

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- (h) Clauses 27 (Overtime days worked) and 28 (Overtime hours worked);
  - (i) Clause 30 (Annual leave);
  - (j) Clause 32 (Jury Service Leave); and
  - (k) Clause 33 (Public holidays).
6. BMCSA's concerns with each term mentioned in paragraph 5 of this submission are covered in more detail below.
7. For several other clauses, BMCSA agrees with the intention of the clause in principle but considers that they could be redrafted to improve their clarity and precision. BMCSA does not propose to deal with those matters in this submission and submits that these matters would be better dealt with as part of revising an exposure draft of the Proposed Award.
8. Among the clauses that BMCSA no longer opposes in principle (or that BMCSA considers to have otherwise been resolved with the AMWU) are:
- (a) Former clause 16.6 of the 2017 September Draft Award (Transmission of business), which has been deleted from the 2018 April Draft Award;
  - (b) Clause 17 (Classifications);
  - (c) Former clause 18.3 of the 2017 September Draft Award (Annual Increment), which has been deleted and replaced with new drafting for clause 18.1 of the 2018 April Draft Award (Minimum wages);
  - (d) Clause 19.1 (Tools of trade), replacing the "Safety equipment allowance" provided for in the 2017 September Draft Award;
  - (e) Former clause 19.3 of the 2017 September Draft Award (Mobile Intensive Care Ambulance allowance), which is now clause 19.5 of the 2018 April Draft Award;
  - (f) Former clause 19.23 of the 2017 September Draft Award (Insurance), which has been replaced with clause 19.25 of the 2018 April Draft Award (Life Insurance and Total and Permanent Disability Insurance);
  - (g) Clause 20 (Accident pay); and
  - (h) Clause 31 (Personal/carer's leave and compassionate leave).

### **Terms in the Proposed Award**

#### ***Clause 16.6 (Transmission of business)***

9. The AMWU has withdrawn the clause. As a result, there is no longer any need for BMCSA to oppose it.

**Clause 18.2 and 18.3 (Check and Training and Line Training)**

10. For clarity, the words "of the total wage payable to a 1st year Aircrewperson as per clause 18" should be amended to read "of the minimum wage in clause 18.1 for a 1st year Aircrewperson".
11. For consistency with clauses 17.1 and 18.2, the words "An Aircrewperson performing training..." in clause 18.3 should be redrafted in the same form as the (amended) clause 18.2 to read: "A Line Training Aircrewperson will be paid an additional amount equal to 5% of the minimum wage in clause 18.1 for a 1st year Aircrewperson".
12. This will also make it clear that the allowance is not only payable for the time that training is being performed but is an all-purpose allowance.

**Former clause 18.3 (Annual Increment) of the 2017 September Draft Award – now part of clause 18.1 (Minimum wages) of the 2018 April Draft Award**

13. Clause 18.3 of the 2017 September Draft Award has been withdrawn by the AMWU and instead a proposed minimum wages table inserted into clause 18.1 of the 2018 April Draft Award based on length of service.
14. On this basis, BMCSA withdraws its in-principle objection to including an annual increment framework and supports the minimum wages table proposed in clause 18.1 of the 2018 April Draft Award.

**Clause 19.1 (Safety equipment allowance)**

15. In the 2018 April Draft Award, the AMWU has reworded the clause as an equipment reimbursement clause. As a result, BMCSA does not object to the new proposed clause.

**Former clause 19.3 (Mobile Intensive Care Ambulance allowance) of the 2017 September Draft Award – now clause 19.5 of the 2018 April Draft Award**

16. BMCSA does not object to the revised clause in the 2018 April Draft Award.

**Former clause 19.4 (Other Required Additional Skill Certification Allowance) of the 2017 September Draft Award – now clause 19.6 of the 2018 April Draft Award**

17. BMCSA maintains its objection to the proposed clause for the reasons set out in the 2017 BMCSA Submission. Further, BMCSA submits that it is incompatible with modern award making principles to introduce a term requiring consultation and an "attempt to reach agreement" between an employer and employees for a proposed new allowance, given that this is more appropriately a matter for enterprise bargaining.

**Former clause 19.5 (Fitness allowance) of the 2017 September Draft Award – now clause 19.7 of the 2018 April Draft Award**

18. BMCSA maintains its objection to the proposed clause for the reasons set out in the 2017 BMCSA Submission.

**Former clause 19.9 (Overseas Allowance) of the 2017 September Draft Award – now clause 19.9 of the 2018 April Draft Award**

19. The Australian Tax Office *Taxation Determination TD 2017/19 Reasonable travel and overtime meal allowance expense amounts* uses a table based on differential cost structures in different countries. The AMWU's proposal to pay a blanket allowance of \$39.55 in addition to all the other meal and overnight allowances is not justified and is inconsistent with a fair and relevant minimum safety net of employment conditions.

**Clause 19.21 (Telephone)**

20. BMCSA does not oppose clause 19.21(a). In relation to clause 19.21(b), the service costs should not apply unless the employer requires the telephone. Work related costs should always be reimbursed.

**Clause 19.24 (Indemnity)**

21. The AMWU has reworded the clause. BMCSA does not object to the new proposed clause. 19.24(a).
22. BMCSA strenuously objects to paragraph 19.24(b) in principle. Making an employer liable to pay a fine personally incurred by an employee is an unprecedented proposal that should be rejected by the Fair Work Commission. The carve-outs for negligence and poor performance are not sufficient to allay BMCSA's concerns with the approach proposed in the paragraph.

**Clause 19.25 (Life Insurance and Total and Permanent Disability Insurance)**

23. The AMWU has reworded the clause. As a result, BMCSA does not object to the new clause in the 2018 April Draft Award.

**Clause 19.26 (Income Protection Insurance)**

24. BMCSA maintains its objection to the proposed clause for the reasons set out in the 2017 BMCSA Submission.

**Clause 20 (Accident pay)**

25. BMCSA does not object to the new clause as set out in the 2018 April Draft Award.

**Clause 22.4 (Superannuation)**

20. The AMWU has reworded the clause to accommodate the default fund which is used by BMCSA, Sunsuper. BMCSA does not object to the new proposed clause.

**Clauses 25 (Hours of duty and days free of duty) and 26 (Multiple day tours)**

26. The 2017 BMCSA Submission addressed these clauses extensively. BMCSA notes that the interaction between these clauses and the annual leave entitlements of permanent tourers under the Proposed Award remains an issue.

**Clause 27 (Overtime days worked)**

27. BMCSA's submission of 6 December 2017 addressed this clause. BMCSA reiterates its objection to all overtime being calculated at double time, and its objection to a night shift penalty being applied in addition to an overtime shift. These provisions exceed what is required for a fair and relevant safety net.
28. The clause as now proposed is ambiguously worded when read in conjunctions with clause 18.6(b) and would lead to a penalty of "triple time" for an overtime day shift. This is because clause 18.6(b) states (in part, emphasis added):

*...Employees working overtime should be paid their ordinary weekly rate of pay...in addition to any applicable penalty in accordance with clauses 18.6(a) and 27.*

The penalty prescribed by clause 27.1 is double time. If paid in addition to the weekly rate of pay, it returns a triple time penalty. This far exceeds what is required for a fair and relevant safety net.

**Clause 28 (Overtime hours worked)**

29. BMCSA suggests redrafting of clause 28.1 with some different ordering of words would provide a clearer description of the overtime entitlement.
30. Clause 28.1 as drafted contains an ambiguity by using the words "as defined in clause 23". An employee's actual rostered ordinary hours are not defined in clause 23; clause 23 contains only the limits on the maximum number of ordinary hours per week averaged over a cycle. This could be solved by rewording at the next draft stage.
31. An additional ambiguity exists through the use of the term "work cycle" in clause 28.1. It is not clear what this means in this context.
32. As raised in our previous submissions, hourly overtime for "shift extensions" should be calculated on a daily basis, consistent with the common principle of each day standing alone for the calculation of overtime. Some "roster cycles" at home bases may be over a period of seven weeks for full rotation; if this is what is meant by the "work cycle" it represents a very long delay in the payment of overtime, and also effectively means that

only two hours overtime over seven weeks would be paid at time and one half and the remainder of all overtime worked for the balance of the "work cycle" be paid at double time.

**Clause 30 (Annual leave)**

33. BMCSA notes that a number of issues raised about clause 30 in the 2017 BMCSA Submission have been addressed in the 2018 April Draft Award. As acknowledged in the 2018 April Draft Award, BMCSA does not agree with the clause's application in relation to permanent tourers and considers that clause 26 should be updated accordingly.<sup>1</sup>

**Clause 32 (Community Service Leave (Jury Service))**

34. BMCSA accepts that it is relevant to include additional provisions in the industry, because the NES provides that jury service is paid at the employee's base rate of pay. The industry standard is that some allowances are paid "all purpose" and for practical purposes the total forms the employee's ordinary rate of pay, as reflected in the draft award.
35. However, clause 32.1(a) as drafted could be interpreted to mean that an employee's entitlement to paid jury leave is uncapped. The clause should be redrafted to be clear that the ten-day limit of the NES still applies to paid jury service leave.
36. BMCSA submits that if an employee is entitled to more than the NES entitlement to ten days of paid jury service leave, the Award goes beyond what should be included in a fair and relevant minimum safety net, and any additional entitlement would be more appropriately a matter for enterprise bargaining.

**Clause 33 (Public holidays)**

37. We refer to the 2017 BMCSA Submission in relation to this clause. As drafted, clause 33 is ambiguous when read alongside clause 30.8 of the 2018 April Draft Award. For the avoidance of doubt, this should be clarified in the public holidays clause by either: replicating clause 30.8(b) in a new clause 33.2; or moving the entirety of clause 30.8 to clause 33 instead.



**Ashurst Australia**  
**Solicitors for Babcock Mission Critical Services Australasia Pty Ltd**

20 April 2018

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<sup>1</sup> See paragraphs 83 to 85 of the 2017 BMCSA Submission.

## IN THE FAIR WORK COMMISSION

**Matter No.:** AM2016/3  
**Title of Matter:** Four yearly review of modern awards –  
Proposed Helicopter Aircrew Award

### STATEMENT OF ANDREW CRIDLAND

On 20 April 2018, I, Andrew Cridland, of 51 Craighburn Farm Circuit, Craighburn Farm in the State of South Australia, Managing Director – Offshore Aviation and Chief Financial Officer Aviation, say as follows:

#### Background

1. I am employed by Babcock Offshore Services Australasia Pty Ltd as the Managing Director – Offshore Aviation, and Chief Financial Officer (**CFO**) Aviation for Babcock Offshore Services Australasia Pty Ltd and Babcock Mission Critical Services Australasia Pty Ltd (**BMCSA**).
2. I have been employed since June 2015 in substantially the same role.

#### Superannuation

3. As the CFO, I have full responsibility for the payroll function for aviation. This includes obligations with respect to superannuation whether this is ensuring BMCSA meets its superannuation obligations and managing any choice relating to BMCSA's default superannuation fund.
4. BMCSA uses Sunsuper as their default superannuation fund.
5. The fund was already established when I commenced employment. On my commencement and after I reviewed it, I saw no reason to change the default fund.
6. We have an aircrew workforce of 61. 37 of those aircrew currently have their superannuation contribution paid into Sunsuper.
7. During 1 April 2017 to 31 March 2018, BMCSA engaged 43 new employees, of which 22 are members of Sunsuper. Six of the new employees are aircrew, and 4 of those are having contributions paid to Sunsuper.
8. In total 118 employees of BMCSA have their superannuation contributions paid to Sunsuper, and 131 employees are in alternative funds.

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9. BMSCA also currently use Sunsuper as its clearing house for superannuation contributions being made on account of all employees irrespective of which superannuation fund the employee is a member of.
10. If the proposed award did not allow BMSCA to use Sunsuper – and if the proposed award applied to BMCSA, the company would be forced to change its default fund.
11. This would require BMSCA to incur some administrative costs in changing the default fund (for aircrew). It would also likely mean that BMSCA would no longer continue to use Sunsuper as its clearing house for all superannuation contributions.
12. In addition, this is likely to have an impact on all BMSCA employees and not only those employees that may be covered by the proposed award as it would not be practical for BMSCA to have multiple default funds.
13. The contents of this statement are true and correct to the best of my knowledge and belief.

  
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Andrew Cridland

20 April 2018  
Date