

FAIR WORK COMMISSION

Matter No: AM2014/253 Aircraft Cabin Crew Award 2010

AM2014/15 Plain Language redrafting

Re: Flight Attendants' Association of Australia

Submission of the Flight Attendants' Association of Australia on Aircraft Cabin Crew Award 2010 Exposure Draft published 15 March 2019

Introduction

1. The Flight Attendants' Association of Australia (FAAA) makes the following submission in response to the Statement published by the President 28 February 2019 [\[2019\] FWC 1262](#), which included a timeline for exposure draft submissions.¹
2. This submission is also responsive to the Statement published by the Plain Language Full Bench on 28 February 2019 [\[2019\] FWC 1255](#), which proposed to deal with the inclusion of a table of "hourly rates" in modern awards, as part of the "light touch plain language process,"² which has a practical impact upon the *Aircraft Cabin Crew Award 2010*.
3. The submissions will address the following matters:
 - a. Exposure Draft matters from prior to the most recently published exposure draft;
 - b. Issues arising from the Exposure Draft of the Aircraft Cabin Crew Award 2010 published 15 March 2019 (Exposure Draft);

¹ The FAAA requested on 11 April 2019 and was [granted an extension on 12 April 2019](#) until 4pm 18 April 2019 to lodge a submission.

² The Group 1 Full Bench made the decision in [\[2015\] FWCFB 4658](#) to include hourly rate tables in all awards.

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- c. Issues arising from the inclusion of hourly rates of pay in the Aircraft Cabin Crew Award 2010, as proposed by the Group 1 Full Bench [\[2015\] FWCFB 4658](#).

Submissions about earlier exposure draft matters

4. The FAAA is providing submissions below about a range of matters which have been overlooked in the earlier process.
5. The FAAA has not been following the exposure draft process, following its last correspondence to the Fair Work Commission ([2 February 2015](#)), which in summary indicated that it would return to the process following its engagement with the Civil Aviation Safety Authority (CASA) about regulatory matters which overlap with award regulation.
6. Unfortunately, the Association was not advised by its specialist staff about the technical and drafting Exposure Draft process, which ran alongside substantive claims. This led to no review being conducted of the Exposure Drafts by the FAAA. The Association has since had a change in industrial legal staff.
7. During the 4 yearly process thus far, there have been no submissions filed on behalf of any unions or registered employee associations about the Exposure Draft for the *Aircraft Cabin Crew Award 2010*. The only perspective represented so far on the Exposure Draft has been from an employer perspective.³
8. In light of the above, we respectfully request that the Commission consider all of our submissions about the various issues arising from the Exposure Draft, despite some of the issues arising from earlier exposure drafts.

³ [Summary of submissions on technical and drafting issues 23 August 2017](#) in AM2014/253

Issues arising from the Exposure Draft of the Aircraft Cabin Crew Award 2010

9. The FAAA has conducted a comparison of the Exposure Draft and the current Award, with some clauses being compared to clauses as existed prior to the commencement of the 4 yearly review of modern awards. Two tables which contain particular comparisons where issues arise are appended to this submission at Appendix A and Appendix B. The issues which arise are addressed in this submission below in order of the clause's appearance in the Exposure Draft.

Calendar Year Definition

10. There was previously a definition of "Calendar Year" in the Current Award. However, there was no use of the term "Calendar Year."
11. The Exposure Draft has proposed to delete the definition.
12. While the FAAA agrees that it makes sense to exclude a definition for a term which is not used, there is the use of the term "year" in various parts of the Award.
13. It would be difficult for employees to determine whether or not their entitlements are being respected with a clear indication of when a year begins and ends. Specifically, for averaging of ordinary hours arrangements.
14. The FAAA proposes that the definition for "year" is included as follows:

"Year" means the twelve month period beginning from the employee's commencement or anniversary of the employee's commencement.

Excessive Annual Leave Provisions

15. The FAAA has no issue with the Excessive Annual Leave Clause which is based on the Model Clause determined by the Commission, and varied to take into

account that cabin crew receive 42 days, rather than 4 weeks of annual leave per year.

16. However, the FAAA notes that other modern awards have had the benefit of the new Excessive Annual Leave Clauses since July 2016.
17. We respectfully request that the current *Aircraft Cabin Crew Award 2010*, be varied to include the modified Excessive Annual Leave clause which is currently in the Exposure Draft at clause 19.

Typographical error in clause B.1.2(a), Schedule B – Regional Cabin Crew

18. There appears to be a typographical error which indicates the the “(a)” in clause B.1.2(a) is “struck out.”

Missing overtime clause in Schedule B – Regional Cabin Crew

19. In reviewing overtime rates for full-time and part-time employees it has come to our attention that regional flying employees do not have overtime provisions. This is despite the Exposure Draft containing a reference at clause 17.2 to overtime entitlements being contained at Schedule B. Further to this, both international and domestic schedules contain overtime clauses. There does not appear to be any reason why regional cabin crew should be excluded from overtime entitlements.
20. The FAAA therefore proposes the following clause to be inserted into Schedule B of the Exposure Draft as clause B.3A.1:

“B.3A Overtime

B.3A.1 Overtime for regional flying will be paid as follows:

(a) For all time worked in excess of 38 hours in a week, the cabin crew member will be paid a penalty of 100% additional to the employee’s base hourly rate, prorated for time less than a complete hour.”

Rostered Days Off in Schedule C – International Cabin Crew

21. There are four clauses in the current award which address the same issue, which is where an employer wishes to contact an employee on a Rostered Day Off and request them to attend for work. The clauses are as follows:

“D.4.3 The employer may contact employees on a rostered day off and request employees to work. The employee may refuse to work if to do so would be unreasonable having regard to:

(a) any risk to employee health and safety; or

(b) the employee’s personal circumstances including any genuine family or carer’s responsibilities.

D.4.4 The employer may contact employees on a rostered day off and request employees to work

D.4.5 The employer may call employees in to undertake duty as required.

D.4.6 Where an employee is assigned to a duty that commences on a rostered day off in accordance with clause D.4.3, a substitute day off will be assigned on an agreed day with the employee. If agreement on a substitute day cannot be reached the substitute day will be assigned in the next roster period.”

22. In the Exposure Draft, clause D.4.4 above has been excluded, which leaves three clauses that have the potential to cause confusion. The exposure draft clauses are as follows:

“C.4.3 The employer may contact employees on a rostered day off and request employees to work. The employee may refuse to work if to do so would be unreasonable having regard to:

(a) any risk to employee health and safety; or

(b) the employee's personal circumstances including any genuine family or carer's responsibilities.

C.4.4 The employer may call employees in to undertake duty as required.

C.4.5 Where an employee is assigned to a duty that commences on a rostered day off in accordance with clause C.4.3, a substitute day off will be assigned on an agreed day with the employee. If agreement on a substitute day cannot be reached the substitute day will be assigned in the next roster period."

23. We can see that the exposure draft clause C4.4 above, seems to either contradict the regulatory arrangement for rostered days off provided by C.4.3 and C.4.5 or render them otiose. It is unclear what the purpose of C.4.4 is. It is apparent that C.4.3 provides for the employer's right to contact an employee and request them to work. There are no restrictions on what kind of work the employer may request of an employee, whether it be standby or work requiring them to come into the airport.
24. The FAAA proposes that clause C.4.4 should be deleted from the Exposure Draft.

Proposed Additional Note for Schedule D – Summary of Hourly Rates of Pay

25. There may be some confusion about how the overtime rates agreed under the facilitative provisions in the Award relate to the overtime rates in the Schedule D – Summary of Hourly Rates of Pay.
26. The FAAA proposes that the following note be included in the Schedule under each table at D.1.1 and D.2.1:

“Note 1: For Domestic Cabin Crew where an employee enters into an agreement with the employer under A.6.1(c) to work beyond the unplanned hour limitations in A.5.1, the rate of pay for that overtime will be what the employee agrees to.

Note 2: For International Cabin Crew where an employee enters into an agreement with the employer under C.6.1(c) to work beyond the unplanned hour limitations in C.5.1, the rate of pay for that overtime will be what the employee agrees to.

27. The FAAA also proposes that the table be varied to include regional overtime rates as described above in paragraph 21.

Overtime for Casuals

28. The FAAA does not agree with the formulation of casual overtime rates. The FAAA will provide submissions to the Full Bench dealing with [AM2017/51 Overtime for Casuals](#).

Issues arising from the inclusion of hourly rates of pay in the Exposure Draft

29. Clause 14.2 of the Exposure Draft contains a ‘minimum hourly rate’. The minimum hourly rate has been derived based on a 38 hour week (ie. by dividing the minimum weekly rate for each classification by 38).
30. The FAAA disagrees with this calculation. It appears the calculation has been based on a 38 hour week contained in the National Employment Standards instead of the ordinary hours of work outlined for cabin crew in the current Award.
31. The ordinary hours of work for international and domestic cabin crew is 1872 hours per year.⁴ The ordinary weekly hours of work based on a 52 week year

⁴ See clause B.2.1 of Schedule B Domestic Flying and clause D.2.1 of schedule D International Flying of the *Aircraft Cabin Crew Award 2010*.

is 36 hours (1872/52). The FAAA therefore submits that the minimum hourly rate for international and domestic flying employees should be based on a 36 hour week.

32. Despite both the Exposure Draft and the current Award referencing that the hours of work for regional cabin crew members is contained in the relevant schedule⁵, the schedule⁶ does not outline ordinary hours for regional cabin crew. As the Award is silent, it is the FAAA’s position that the ordinary weekly hours of regional flying employees should be based on the 38 hour week contained in the National Employment Standards. Further, we submit that the minimum hourly rate for regional flying employees should be based on a 38 hour week.

33. Based on our above submissions, the FAAA proposes that the minimum hourly rates should be as follows:

| Employee classification | Minimum weekly rate | Minimum hourly rate of Domestic & international flying employees (based on 36 hours) | Minimum hourly rate of Regional flying employees (based on 38 hours) |
|---|----------------------------|---|---|
| Cabin crew member | \$821.10 | \$22.81 | \$21.61 |
| Cabin crew supervisor (narrow-bodied aircraft, four or more crew) | \$958.00 | \$26.61 | \$25.21 |
| Cabin crew manager (wide- | \$1118.80 | \$31.08 | \$29.44 |

⁵ At clause 13.2 of the Exposure Draft dated 15 March 2019 and at clause 24.2 of the *Aircraft Cabin Crew Award 2010*

⁶ See Schedule B of the Exposure Draft dated 15 March 2019 and Schedule C of the *Aircraft Cabin Crew Award 2010*

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| bodies aircraft) | | | |
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34. The FAAA also proposes that the above proposed changes to the minimum hourly rate be reflected in the tables in Schedule D – Summary of Hourly Rates of Pay in the Exposure Draft.

END

18 April 2019

APPENDIX A
FAAA CLAUSE COMPARISON OF EXPOSURE DRAFT AND CURRENT AWARD

| <u>Clause Type</u> | <u>Exposure Draft</u> | <u>Current Award</u> | <u>FAAA Comment</u> | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|--|--|--|---------------------|--|----|----|-------------------|--------|-------|---|--------|-------|---|---------|-------|--|----------------|---------------------|--|----|-------------------|--------|---|--------|---|---------|---|
| Definitions | Clause 2 | Clause 3 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (i) Calendar year definition | Definition removed. | calendar year means the period between 0000 hours on 1 January and 2359 hours on 31 December of the same year | There is no reference to 'calendar year' in the Award or the Exposure draft. However, there is a reference to 'year.' The FAAA proposes that the definition for "year" is included. See submissions for further detail. | | | | | | | | | | | | | | | | | | | | | | | | | |
| Minimum wages | Clause 14 | Clause 18 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| (i) Minimum wages table | <p>14.2 An employer must pay employees the following minimum wages for ordinary hours worked by the employee:</p> <table border="1"> <thead> <tr> <th>Employee classification</th> <th>Minimum weekly rate (full-time employees)</th> <th>Minimum hourly rate</th> </tr> </thead> <tbody> <tr> <td></td> <td style="text-align: center;">\$</td> <td style="text-align: center;">\$</td> </tr> <tr> <td>Cabin crew member</td> <td style="text-align: center;">821.10</td> <td style="text-align: center;">21.61</td> </tr> <tr> <td>Cabin crew supervisor (narrow-bodied aircraft, four or more crew)</td> <td style="text-align: center;">958.00</td> <td style="text-align: center;">25.21</td> </tr> <tr> <td>Cabin crew manager (wide-bodied aircraft)</td> <td style="text-align: center;">1118.80</td> <td style="text-align: center;">29.44</td> </tr> </tbody> </table> | Employee classification | Minimum weekly rate (full-time employees) | Minimum hourly rate | | \$ | \$ | Cabin crew member | 821.10 | 21.61 | Cabin crew supervisor (narrow-bodied aircraft, four or more crew) | 958.00 | 25.21 | Cabin crew manager (wide-bodied aircraft) | 1118.80 | 29.44 | <table> <thead> <tr> <th>Classification</th> <th>Minimum weekly wage</th> </tr> </thead> <tbody> <tr> <td></td> <td style="text-align: center;">\$</td> </tr> <tr> <td>Cabin crew member</td> <td style="text-align: center;">821.10</td> </tr> <tr> <td>Cabin crew supervisor (narrow-bodied aircraft, four or more crew)</td> <td style="text-align: center;">958.00</td> </tr> <tr> <td>Cabin crew manager (wide-bodied aircraft)</td> <td style="text-align: center;">1118.80</td> </tr> </tbody> </table> | Classification | Minimum weekly wage | | \$ | Cabin crew member | 821.10 | Cabin crew supervisor (narrow-bodied aircraft, four or more crew) | 958.00 | Cabin crew manager (wide-bodied aircraft) | 1118.80 | FAAA disagrees with the calculation for minimum hourly rate. Exposure draft has added in an extra row to show the minimum hourly rate. However it has been calculated on a 38 hour week and has not taken into consideration the different flying types (international, domestic, regional). See further details in submissions. |
| Employee classification | Minimum weekly rate (full-time employees) | Minimum hourly rate | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | \$ | \$ | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Cabin crew member | 821.10 | 21.61 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Cabin crew supervisor (narrow-bodied aircraft, four or more crew) | 958.00 | 25.21 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Cabin crew manager (wide-bodied aircraft) | 1118.80 | 29.44 | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Classification | Minimum weekly wage | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | \$ | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Cabin crew member | 821.10 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Cabin crew supervisor (narrow-bodied aircraft, four or more crew) | 958.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Cabin crew manager (wide-bodied aircraft) | 1118.80 | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Redundancy | Redundancy clause removed due to plain language consideration of full bench. | Clause 16 | FAAA to review plain language matter. | | | | | | | | | | | | | | | | | | | | | | | | | |
| Excessive annual leave accruals | Clause 19 Provides for employees with accrued annual leave of more than 84 days to | Clause 25.4 Provides for employees with accrued annual leave of more than 8 weeks to | FAAA has no issues with the modifications which preserve the proportions of the model clause for Cabin crew annual leave (which is 42 days per | | | | | | | | | | | | | | | | | | | | | | | | | |

APPENDIX A

FAAA CLAUSE COMPARISON OF EXPOSURE DRAFT AND CURRENT AWARD

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| | <p>be directed to take annual leave. The direction to take annual leave cannot result in annual leave being less than 63 days.</p> | <p>be directed to take 25% of the accrued annual leave.</p> | <p>year). However, the current award should be updated as soon as possible to take into account the modifications which are expressed in the exposure draft. Further details in submissions.</p> |
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APPENDIX B
FAAA SCHEDULE COMPARISON OF EXPOSURE DRAFT AND CURRENT AWARD

| <u>Schedule Type</u> | <u>Exposure Draft</u> | <u>Current Award</u> | <u>FAAA Comment</u> |
|------------------------------------|---|--|--|
| Regional Flying | Schedule B | Schedule C | |
| (i) Travel at employer's direction | B.1.2(a) | C.1.2(a) | There appears to be an error in the exposure draft, which has a "strike through" of paragraph (a). |
| International Flying | Schedule C | Schedule D | |
| (i) Rostered days off | <p>Clauses C.4.3 & C.4.4</p> <p>C.4.3 The employer may contact employees on a rostered day off and request employees to work. The employee may refuse to work if to do so would be unreasonable having regard to: (a) any risk to employee health and safety; or (b) the employee's personal circumstances including any genuine family or carer's responsibilities.</p> <p>C.4.4 The employer may call employees in to undertake duty as required.</p> | <p>Clauses D.4.3, D.4.4 & D.4.5</p> <p>D.4.3 The employer may contact employees on a rostered day off and request employees to work. The employee may refuse to work if to do so would be unreasonable having regard to: (a) any risk to employee health and safety; or (b) the employee's personal circumstances including any genuine family or carer's responsibilities.</p> <p>D.4.4 The employer may contact employees on a rostered day off and request employees to work</p> <p>D.4.5 The employer may call employees in to undertake duty as required.</p> | <p>There are two inconsistent clauses, which would cause confusion. FAAA proposes deleting exposure draft clause C.4.4.</p> <p>See FAAA Submissions.</p> |

APPENDIX B
FAAA SCHEDULE COMPARISON OF EXPOSURE DRAFT AND CURRENT AWARD

| | | | |
|--|-------------------|----------------------|---|
| <p>Summary of Hourly Rates of Pay</p> | <p>Schedule D</p> | <p>No equivalent</p> | <p>The hourly rates will need to be adjusted per FAAA submissions regarding minimum hourly rate. See submission.</p> <p>A note needs to be included about facilitative provision. See submission.</p> <p>For casuals, the FAAA is also making submissions about the casual overtime rate to the Casual Overtime Full Bench.</p> |
|--|-------------------|----------------------|---|