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AM2016/3 Proposed Helicopter Aircrew Award

Introduction

1. This submission is made by the “Automotive, Food, Metals, Engineering, Printing and Kindred Industries Union” known as the Australian Manufacturing Workers’ Union (**AMWU**) to address the issues discussed by the parties at the Conference conducted on 15 October 2021 in relation to the proposed variation to the *Air Pilots Award 2020* (“**Award**”).
2. The Conference was held in the Fair Work Commission to facilitate discussion in respect of the exposure draft of the Air Pilots Award 2020 that incorporated Helicopter Aircrew classifications and associated entitlements that was published on 17 September 2021 (**Exposure Draft**).
3. On 14 October 2021 the AMWU, jointly with Babcock and CHC Helicopters filed a document setting out various issues identified by each of the parties (**Summary of Positions Document**).
4. The AMWU continues to rely on and press the matters it raised in the Summary of Positions Document (see the table at page 9 of that document), and the matters raised verbally at the conference, except where otherwise advised in this submission.
5. This submission will provide an updated position from the AMWU in respect to the following matters:
 - a. Wage Related Allowances in Clause 20.2
 - b. Superannuation
 - c. Night Vision Goggle Allowance and MICA Allowance
 - d. Mobile Intensive Care Allowance
 - e. Proposed All-Purpose Allowance
 - f. Transfers
 - g. Hours of work
 - h. Clause 16 – Rostering Arrangements
 - i. Clause 20.3 Allowances
 - j. Training Bonds

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Allowances in clause 20.2

6. In the Summary of Positions Document (see table at page 9 and Annexure A), and during the Conference¹ the AMWU made a submission that the night operations and overseas duties allowances in clauses 20.2(b) and 20.2(d) should be re-drafted based on the standard rate for aircrew.
7. The AMWU withdraws that submission and wishes to advise the Fair Work Commission that it is satisfied with clause 20.2 as currently provided for in the Exposure Draft (subject to the below comments in relation to the Night Vision Goggle Allowance).

Superannuation

8. In the Summary of Positions Document (see table at page 9 and Annexure B) the AMWU proposed amendments to clause 22.4 to ensure default superannuation funds relevant to helicopter aircrew would be included in the default fund clause.
9. During the Conference, it was put to the AMWU that the default super funds the AMWU was proposing be inserted into clause 22.4 be limited to aircrew.² The AMWU therefore proposes the following amendments to clause 22.4 of the Exposure Draft:

22.4 Superannuation fund

Unless, to comply with superannuation legislation, the employer is required to make the superannuation contributions provided for in clause 22.2 to another superannuation fund that is chosen by the employee, the employer must make the superannuation contributions provided for in clause 22.2 and pay the amount authorised under clauses 22.3(a) or (b) to one of the following superannuation funds or its successor:

(a) In respect of pilots:

- i. Aviation Industry Superannuation Trust (TAIST));*

(b) In respect of helicopter aircrew:

- ii. Australian Super; or*
- iii. Sunsuper.*

(c) In respect of pilots and helicopter aircrew:

- i. any superannuation fund to which the employer was making superannuation contributions for the benefit of its employees before **[insert date this variation is to take place]**, provided the superannuation fund is an eligible choice fund and is fund that offers a MySuper product or is an exempt public sector superannuation scheme; or*

¹Transcript of Proceedings, *Four yearly review of modern awards (AM2016/3)* [2021] FWC (VP Hatcher) PN40-60.

² Ibid PN79.

- ii. a superannuation fund or scheme which the employee is a defined benefit member of.

Night Vision Goggle Allowance and MICA Allowance

10. During the Conference, it was put to the AMWU that if the Night Vision Goggle Allowance is to be payable for all purposes, it should be re-drafted into an hourly rate on the basis that this would be appropriate if the allowance is to be considered to be payable for all purposes.

11. In light of those comments, the AMWU proposes the following new Night Vision Goggles clause:

Where an employer requires the use of night vision goggles (NVG), employees who have been trained in the use of NVG's will be paid the NVG allowance as a weekly allowance as follows:

	\$ per week
<i>Rescue aircrewperson/<u>surveillance aircrewperson</u></i>	\$55.11
<i>Aircrewperson/<u>Surveillance Mission Coordinator</u></i>	\$88.10

11. The reason the AMWU has re-drafted the entitlement as a weekly rate rather than hourly rate as suggested is due to the fact that the ordinary hourly rate for helicopter aircrew is expressed as being based on a weekly rate (i.e. the weekly minimum rate plus any all-purpose allowances, divided by 38 (see clauses E.3.4 and E.3.5 of the Exposure Draft)).

12. The AMWU therefore submits that expressing all-purpose allowances as a weekly rate rather than hourly rate will make the calculation of the ordinary weekly rate and ordinary hourly rate a more simple task in circumstances where it is necessary to calculate the ordinary weekly rate as a necessary step before calculating the ordinary hourly rate. The AMWU has applied this reasoning to the Night Vision Goggles allowance clause, which is why it is now proposing a weekly rather than hourly rate. The AMWU is not otherwise opposed to the clause being further re-drafted so as to be an hourly rate.

13. The AMWU further proposes that if the above re-draft is accepted, the clause be moved into schedule E, on the basis that the clause is no longer in the same terms as the Night Vision Goggles entitlement for pilots which is expressed as being an annual rate in clause 20.2(c).

Mobile Intensive Care Allowance

14. Although not discussed at the conference, if the FWC is minded to re-draft all-purpose allowances as a weekly or hourly rate, it may be appropriate to do the same for the MICA allowance, which is currently expressed as being a yearly rate.

15. The AMWU therefore proposes the following re-draft of clause E.4.2 of the exposure draft:

“An employee who is trained and certified with a Mobile Intensive Care Ambulance certificate or substantially equivalent certification and is required by the employer to hold that qualification as part of their duties is entitled to a weekly allowance of \$67.36.”

Proposed All-Purpose Allowance Clause

16. The AMWU has engaged in discussions with Babcock and CHC identifying which allowances are all-purpose allowances.

17. The AMWU proposes the following all-purpose allowance clause to be included in the exposure draft:

All-purpose allowances applicable to helicopter aircrew under this award include

the following:

(i) Additional qualifications – supervisory aircrewpersons

(ii) Night vision goggle operation allowance;

(iii) Mobile intensive care ambulance allowance.

18. Babcock and CHC have viewed the AMWU’s proposed all-purpose allowance clause and the AMWU understand they (Babcock and CHC) are not opposed to the insertion of a clause in the above terms.

Transfers

19. During the conference on 15 October 2021 Vice President Hatcher put to the AMWU a question as to whether a carve out could be inserted into clause 14 of the award, on the basis that based on the proposed terms of the Air Pilots Award as varied, clause D.2 deals with transfers and applies to them.³

20. The AMWU acknowledged that there is some overlap between the provisions in the body of the award and the schedule regarding transfers and that⁴ as a result of the overlap, it is unlikely that a clause in the body of the Award would apply over a clause in the schedule and the provisions in the schedule are sufficient.⁵ The AMWU expressed provisional support for a carve out on that basis.

21. However, having looked more closely at clauses 14 and D.2 (clause D.2 applies to Helicopter Aircrew virtue of clause E.5), the AMWU now advises it does not support an amendment to clause 14 to exclude helicopter aircrew.

22. This is due to the fact that there are differences between clause 14 and D.2. For example, clause 14.1 requires 56 days of notice for permanent transfers, while clause D.2.5 requires one month notice in the case of a pilot being transferred to another base.

³ Ibid PN139.

⁴ Ibid PN140-142.

⁵ Ibid.

23. While the AMWU concedes that the precise interaction between clause 14 and clause D.2 is not entirely clear, it is relevant that pilots are not carved out from clause 14. In the event that there is an inconsistency between the award and schedule, the provision in the schedule will prevail.⁶ clause E.2 applies and explicitly outlines that the provision in the schedule prevail.

Hours of Work

24. During the conference it was put to the AMWU whether helicopter aircrew could be carved out of clause 15 of the Exposure Draft, on the basis there is a more specific hours of work clause that applies in Schedule E.⁷ The AMWU expressed provisional support for the suggestion.

25. Having looked at clause 15 in its entirety, the AMWU now advises that it does not support an amendment to clause 15 to carve out its application to helicopter aircrew. This is because whilst Schedule E offers a more specific hours of work clause for helicopter aircrew, there are subclauses in clause 15 that still have work to do for helicopter aircrew. For example, see clause 15.6 Reserve time, clause 15.7 Periods of duty and clause 15.8 Periods free of duty are relevant to helicopter aircrew.

Clause 16 – Rostering Arrangements

26. During the Conference on 15 October 2021, it was put to the AMWU whether clause 16 could be carved out as not applying to helicopter aircrew.⁸

27. In the AMWU's submission, clause 16 has work to do for helicopter aircrew employees. There is no substantially equivalent clause in Schedule E, and as such, the clause should not be varied to exclude helicopter aircrew.

Clause 20.3 Allowances

28. During the Conference Vice President Hatcher queried whether helicopter aircrew could be carved out of the application of clause 20.3(a) on the basis that the entitlements in that sub-clause are provided to compensate the same disabilities and/or expenses dealt with at various sub-clauses in schedule E.⁹

29. Clause 20.3(a) provides for:

- accommodation and meal allowances (**clause 20.3(a)(i)-(v)**).
- camping out allowance (in lieu of all other entitlements to accommodation and meals under clause 20.3(a)) (**clause 20.3(a)(vi)**).

⁶ Clause E.2 of the Exposure Draft.

⁷ Ibid PN147.

⁸ Ibid PN164.

⁹ Ibid PN165.

30. Clause D.4.2 is applicable to both on and offshore pilots and provides for the following entitlements that are also extended to helicopter aircrew by virtue of the provisions of schedule E:

- A camping allowance (that also requires the employer to provides equipment and messing of a first class standard **(clause D.4.2(c)) applied to helicopter aircrew virtue of clause E.4.7)**)

31. Clause **D.5.6** also applies to onshore operations only and provides for the following entitlements that are also extended to helicopter aircrew by virtue of the provisions of schedule E:

- An entitlement to be provided with first class accommodation and transport as provided in clause D.6.4 or an allowance in lieu **(clause D.5.6(b)(i))**
- A meal allowance that applies when the pilot is away from home base on an overnight or field tour **(clause D.5.6(b)(ii))**

The entitlements at D.5.6 are extended to helicopter aircrew performing on-shore operations by virtue of clause E.8.2.

32. In addition, D.6.6 applies in respect of offshore operations and provides for the following entitlements for pilots that are also extended to helicopter aircrew by virtue of the provisions of schedule E:

- An entitlement to be provided with first class accommodation and transport while travelling away from home base **(clause D.6.6 (a) and (b) applied to helicopter aircrew virtue of clause E.9.2))**.
- A daily travel allowance **(clause D.6.6(c) applied to helicopter aircrew virtue of clause E.9.3)**.

33. The above analysis reveals that the accommodation, camping and meal allowances for in clause 20.3(a) are also provided for in the proposed Schedule E.

34. On that basis, the AMWU is not opposed to an amendment to carve out helicopter aircrew from clause 20.3(a), provided that such a carve out is expressed with sufficient clarity to ensure the carve out is limited to clause 20.3(a) only and not to the entirety of clause 20.3.

Training Bonds

35. During the Conference Vice President Hatcher queried whether clause 13.6 was relevant to helicopter aircrew.¹⁰ The AMWU submits that applying clause 13.6 to helicopter aircrew is not necessary, and the AMWU does not support such a proposal.

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¹⁰ Ibid PN135.